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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 187

CHERRY COTTON MILLS, INC., PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JULY 2, 1945.

CERTIORARI GRANTED OCTOBER 15, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 8, 1945.

[fol. 1] **IN THE COURT OF CLAIMS**

No. 45885

CHERRY COTTON MILLS, INC., Plaintiff,

v.

THE UNITED STATES OF AMERICA, Defendant

PETITION—Filed June 12, 1943

To the Honorable, the Chief Justice and Judges of the Court of Claims:

The above-named plaintiff, Cherry Cotton Mills, Inc., by this its petition respectfully shows:

1. That the plaintiff is a corporation organized and existing under the laws of the State of Alabama and having its office and principal place of business at Florence, Alabama.

2. That the plaintiff, a cotton processor, filed a claim for refund of processing and floor stock taxes paid under the Agricultural Adjustment Act, claim No. F 2859, with the Collector of Internal Revenue for the Collection Dis-
[fol. 2] trict of Alabama, which was allowed by the Commissioner of Internal Revenue in the amount of $3,104.87 on Schedule No. PT (IT:UE)-458; a final closing agreement, under Section 506 of the Revenue Act of 1936, was accepted and signed by the Acting Commissioner of Internal Revenue February 5, 1942, and by letter dated April 29, 1942, that plaintiff was advised by Deputy Commissioner Timothy C. Mooney that, unless the plaintiff is indebted to the United States Government, a check would issue, and that the Treasurer of the United States issued check No. 164745 payable to the plaintiff in the said amount of $3,104.87, which was mailed to the plaintiff by Deputy Commissioner D. S. Bliss July 24, 1942, with Treasury Department form No. 7801 B.

3. That payment of the check was stopped and the plaintiff was so notified by telegram dated August 26, 1942, from the Chief Dispersing Officer, the Comptroller General of the United States, having in his advice of payment of set-

tlement to accompany check, under date of August 11, 1942, certified:

> I have certified that there is due you from the United States, payable from the appropriation(s) indicated, the sum of—
>
> THREE THOUSAND ONE HUNDRED FOUR AND 87/100 DOLLARS ($3,104.87)
>
> on account of refund of processing and floor stock taxes as per claim No. F 2859, Dist. of Alabama, Sch. No. PT(ITUE)458.
> 209/30909 Refunds and Payments of Processing and Related Taxes, Bureau of Internal Revenue, 1939-1943.
>
> Check to issue in favor of:
> Reconstruction Finance Corporation,
> Washington, D. C.
>
> [fol. 3] The amount of the refund is applied to partially liquidate an indebtedness of the Cherry Cotton Mills, Florence, Alabama, in the amount of $5,963.50, plus interest at 5% from July 12, 1939, due the Reconstruction Finance Corporation.

4. That the indebtedness of the plaintiff to the Reconstruction Finance Corporation, a body corporate, is not a claim or demand by the Government of the United States and the said sum of $3,104.87 is erroneously applied to the indebtedness to the Reconstruction Finance Corporation, and is illegally withheld from the plaintiff.

5. That the plaintiff is entitled to the payment of the refund of the said $3,104.87 without credit or set-off.

6. No action other than as aforesaid has been had on this claim in Congress or in any of the Departments. The plaintiff has at all times borne true allegiance to the Government of the United States. The said plaintiff has never in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government. The said plaintiff is and has always been the sole and absolute owner of the claim here presented. It has made no transfer nor assignment of said claim nor of any part thereof nor of any interest therein. It is justly entitled to the amount claimed from the United States of America.

7. The plaintiff believes the facts as herebefore stated to be true.

Wherefore, the plaintiff prays judgment against the [fol. 4] United States of America upon the facts and law for Three Thousand, One Hundred Four and 87/100 ($3,104.87) Dollars.

Cherry Cotton Mills, Inc., by J. T. Flagg, President; Theodore B. Benson, 817 Southern Building, Washington, D. C., Counsel for Plaintiff.

Duly sworn to by P. T. Flagg. Jurat omitted in printing.

[fol. 5] On February 2, 1944, on motion made therefor, and allowed by the court, defendant filed its answer and counterclaim, which is as follows:

DEFENDANT'S ANSWER AND COUNTERCLAIM—Filed February 2, 1944

Now comes the United States of America, by its Assistant Attorney General, leave of the Court first having been had and obtained, and answering the petition filed in the above-entitled cause, alleges as follows:

Answer

1. Upon information and belief, it admits the allegations contained in paragraph 1 of the petition.

2. It admits the allegations contained in paragraph 2 of the petition, with the exception of the allegation that Check No. 164,745 of the Treasurer of the United States was mailed to plaintiff on July 24, 1942 which allegation is denied.

3. It admits the allegations contained in paragraph 3 of the petition.

[fol. 6] 4. It denies the allegations contained in paragraph 4 of the petition, with the exception of the allegation that the Reconstruction Finance Corporation is a body corporate, which allegation is admitted.

5. It denies the allegations contained in paragraph 5 of the petition.

6. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the petition, with the exception of the allegation that plaintiff is justly entitled to the amount claimed from the United States of America, which allegation is denied.

7. It denies each and every other allegation contained in the petition.

And, the United States of America, leave of the Court first having been had and obtained, further answering the petition filed in the above-entitled cause, by way of set-off or counterclaim, alleges as follows:

Counterclaim

1. Pursuant to an Application, dated October 7, 1935, by plaintiff to The First National Bank of Florence, Florence, Alabama (hereinafter called "the Bank"), for a loan in the principal amount of not exceeding $110,000, to be evidenced by a Note secured by certain collateral, with the understanding that the Bank would request the Reconstruction [fol. 7] Finance Corporation (hereinafter called "the R. F. C.") to agree to purchase a participation in said Note, the Bank agreed to lend plaintiff not exceeding $110,000, to be disbursed to plaintiff in deferred portions as requested of the Bank by plaintiff.

2. On January 30, 1936, for value received, plaintiff executed a Note, payable to the Bank, promising to pay $110,000, with interest at 5 per cent per annum, payable semi-annually, with certain collateral as security and containing, *inter alia*, provisions for acceleration of maturity of said Note and power of sale upon default of plaintiff with respect to the terms and conditions of said Note.

3. On January 30, 1936, plaintiff entered into a Mortgage, with the Bank as mortgagee, which recites that plaintiff is indebted to the Bank in the principal sum of $110,000, with interest at 5 per cent per annum, payable semi-annually, as evidenced by plaintiff's Note of January 30, 1936, and contains, *inter alia*, provisions for acceleration of the maturity of the debt and for foreclosure and power of sale by the mortgagee upon default of plaintiff with respect to the terms and conditions of said Note and said Mortgage,

with power in said mortgagee to bid at such sale and purchase, if the highest bidder, and power in $110,000, including the 66⅔ per cent participa- * * * gage or the auctioneer, upon such sale to execute a foreclosure deed in [fol. 8] the name of plaintiff, said Mortgage being recorded in Vol. 259, pages 248-256, Lauderdale County, Alabama.

4. On or about February 5, 1936, pursuant to the Bank's Application to the R. F. C. for an Agreement to Purchase a Participation in plaintiff's Note of January 30, 1936, the R. F. C. entered into a Participation Agreement with the Bank, providing that, upon the making of the loan, not in excess of $110,000, to plaintiff by the Bank, the R. F. C. agrees to purchase a 66⅔ per cent interest in plaintiff's Note, evidencing such $110,000 loan to plaintiff by the Bank, on condition, *inter alia*, that the R. F. C. shall receive said Note, endorsed without recourse by the Bank to the R. F. C., and transfer of the Mortgage of January 30, 1936, as required by Section III of a Resolution of October 16, 1935, of the Executive Committee of the R. F. C.

5. On February 5, 1936, as required by the Participation Agreement of the R. F. C., the Bank endorsed plaintiff's said Note, which was delivered to the R. F. C., and also executed a Transfer of Mortgage, reciting that the Bank, for value received, grants, bargains, sells, conveys, assigns, and delivers to the R. F. C., its successors and assigns, all its right, title, and interest in the Mortgage entered into by plaintiff on January 30, 1936, together with the debt there secured, the notes therein described, and the land and property therein conveyed, to have and to hold [fol. 9] unto the R. F. C., its successors and assigns, forever, said Transfer of Mortgage being recorded in Vol. 260, pages 441-442, Lauderdale County, Alabama.

6. On March 2, 1936, following advice of a Certificate of February 8, 1936, stating that all documents, including said endorsed Note and Transfer of Mortgage, had been received from the Bank by the Custodian of the R. F. C. in satisfactory form, the R. F. C. executed a Certificate of Interest, reciting that, as provided in the Participation Agreement, the Bank has made the loan to plaintiff, as evidenced by plaintiff's Note, and the R. F. C. has purchased the participation in said Note and has received delivery of said Note

and the collateral and that the Bank has retained an interest in said Note and the collateral so delivered, in a principal amount equal, at any given time, to 33⅓ per cent of the unpaid principal amount of said Note disbursed until such time.

7. By on or about August 15, 1936, all of the principal amount of the loan not exceeding $110,000 made by the Bank to plaintiff, to wit, $110,000, including the 66⅔ per cent participation of the R. F. C. therein, was disbursed by the Bank to and received by plaintiff.

8. On March 25, 1939, upon and after default of plaintiff with respect to the terms and conditions of its Note and Mortgage of January 30, 1936, and after demand by the [fol. 10] R. F. C. that plaintiff comply therewith, and pursuant to an Authorization of February 13, 1939, of the Executive Committee of the R. F. C. to accelerate the maturity of plaintiff's said Note and to take steps to foreclose all hypothecations of collateral securing the loan evidenced by said Note, the R. F. C. served due and proper Notice of Acceleration of said Note on plaintiff, receipt thereof being acknowledged by J. T. Flagg, plaintiff's President, on said date.

9. On July 12, 1939, there was due and owing from plaintiff to the R. F. C. and the Bank $108,194.06, of which 66⅔ per cent or $72,129.38 was the share of the R. F. C. and 33⅓ per cent or $36,064.68 was the Bank's share.

10. On July 12, 1939, foreclosure of plaintiff's said Mortgage of January 30, 1936, was instituted by the R. F. C. in the joint names of the R. F. C. and the Bank and, at the foreclosure sale, the R. F. C. and the Bank became joint purchasers of the property listed as collateral security for plaintiff's debt, the bid and purchase price being the sum of $100,000, and that, as the result of such foreclosure sale, the R. F. C. received a 66⅔ per cent or $66,666.67 interest and the Bank received a 33⅓ per cent or $33,333.33 interest in the acquired property, as shown by a Foreclosure Deed executed in behalf of plaintiff by Crampton Harris as Auctioneer and Attorney in Fact on July 17, 1939, and [fol. 11] recorded, on July 18, 1939, in Vol. 288, pages 206-212, Lauderdale County, Alabama.

11. Expenses incidental to said foreclosure sale, which were properly disbursed by the R. F. C. and the Bank and are properly chargeable to plaintiff under the terms and conditions of its Note and Mortgage of January 30, 1936, were incurred by the R. F. C. and the Bank in the sum of $751.19 and plaintiff has failed to reimburse the R. F. C. and the Bank therefor.

12. On July 12, 1939, after crediting plaintiff with the $100,000 purchase price paid for its property by the R. F. C. and the Bank on the foreclosure sale, there remained due and owing from plaintiff to the R. F. C. and the Bank $8,945.25, of which 66⅔ per cent or $5,963.51 was the share of the R. F. C. and 33⅓ per cent or $2,981.74 was the Bank's share.

13. On February 5, 1942, following the filing of plaintiff's claim with the Collector of Internal Revenue for the District of Alabama for a refund of processing and floor stock taxes paid by it under the Agricultural Adjustment Act, which was allowed by the Commissioner of Internal Revenue in the amount of $3,104.87, a final closing agreement, under Section 506 of the Revenue Act of 1936, was accepted by the Acting Commissioner of Internal Revenue and, by letter of April 29, 1942, Deputy Commissioner of Internal [fol. 12] Revenue Mooney advised plaintiff that, unless plaintiff is indebted to the United States Government, a check for such refund would issue to it.

14. On or about August 17, 1942, the Treasurer of the United States issued Check No. 164,745, payable to plaintiff in the amount of $3,104.87, which check was stopped and recalled from plaintiff by telegram, dated August 26, 1942, of the Chief Disbursing Officer, Treasury Department, who informed plaintiff that the check should have been drawn to the ~~order~~ of the R. F. C. to liquidate partially the indebtedness of plaintiff to the R. F. C.

15. On September 2, 1942, after the return of said check by plaintiff, a reissued check, bearing the same number, date, and amount and drawn to the order of the R. F. C., was transmitted to the R. F. C. by the Treasurer of the United States, said reissued check being in accord with Certificate of Settlement No. 0690274, dated August 11, 1942, of the General Accounting Office, which directed issuance of the check in settlement of plaintiff's claim for

the refund to the R. F. C. to liquidate partially the indebtedness of plaintiff in the amount of $5,963.51, plus interest at 5 per cent from July 12, 1939, due the R. F. C.

16. On September 2, 1942, the R. F. C. allowed plaintiff a credit or deduction of $3,104.87 in its accounts relating to plaintiff's indebtedness to the R. F. C., leaving now due [fol. 13] and owing to the R. F. C. from plaintiff a sum to be computed, consisting of a principal balance of $2,858.64 plus interest at 5 per cent per annum on $5,963.51 from July 12, 1939, to September 2, 1942, and also interest at 5 per cent per annum on $2,858.64 from September 2, 1942, to date, no part of which sum to be computed has been paid to the R. F. C. by plaintiff, despite demand made on plaintiff for such payment by the R. F. C.

17. The R. F. C. is a body corporate, created by the Act of January 22, 1932 (47 Stat. 5), as amended, whose entire capital stock is owned by the United States of America, whose management is vested by said Act in a board of directors consisting of five persons appointed by the President of the United States by and with the advice and consent of the Senate, and which is a constituent part of the Government of the United States of America.

18. Plaintiff's indebtedness to the R. F. C. is a claim or demand of the United States of America and said sum of $3,104.87 claimed by plaintiff is legally withheld from it and properly applied to its indebtedness to the R. F. C., which is entitled to said sum of $3,104.87 as a credit or set-off to plaintiff's indebtedness to it.

Wherefore, the United States of America prays judgment that the petition be dismissed and also judgment against plaintiff on its counterclaim in the sum to be computed, [fol. 14] consisting of $2,858.64 plus interest at 5 per cent per annum on $5,963.51 from July 12, 1939, to September 2, 1942, and also interest at 5 per cent per annum on $2,858.64 from September 2, 1942, to date of judgment herein, together with interest at 6 per cent per annum on such computed sum until paid.

Francis M. Shea, Assistant Attorney General.

Julian R. Wilheim, Attorney for the United States.

[fol. 15] PLAINTIFF'S REPLY TO COUNTERCLAIM—Filed February 23, 1944

Now comes the plaintiff, by its attorney and replying to the defendant's counterclaim admits, denies and alleges:

1 to 16. The plaintiff admits the allegations contained in paragraphs 1 to 16, inclusive, save and except the allegation, or inference from an allegation, that the sum here sued for was pledged as security for the said note or mortgage, which the plaintiff denies.

17. The plaintiff admits the allegations contained in paragraph 17, with the exception of the allegation that the R. F. C. is a constituent part of the Government of the United States of America, which allegation is denied.

18. The plaintiff denies the allegations contained in paragraph 18 of the counterclaim.

[fol. 16] Wherefore, the plaintiff prays that the defendant's counterclaim be denied and that judgment be entered for the plaintiff in the sum of $3,104.87.

Cherry Cotton Mills, by Theodore B. Benson, Attorney, 817 Southern Building, Washington, D. C.

Duly sworn to by Theodore B. Benson. Jurat omitted in printing.

[fols. 17-18] ARGUMENT AND SUBMISSION OF CASE

On October 11, 1944, the case was argued and submitted on merits by Mr. T. B. Benson for plaintiff, and by Mr. E. E. Ellison for defendant.

[fol. 19] **Special Findings of Fact, Conclusion of Law, and Opinion of the Court by Madden, Judge**—Filed March 5, 1945

Mr. Theodore B. Benson, for the plaintiff.

Mr. E. E. Ellison, with whom was Mr. Assistant Attorney General Francis M. Shea, for the defendant. Messrs. Julian R. Wilhelm, George E. Heidlebaugh, and S. R. Gamer were on the brief.

This case having been heard by the Court of Claims, the Court, upon a stipulation entered into by the parties, makes the following

Special Findings of Fact

1. Plaintiff is, and at all times hereinafter mentioned was, a corporation organized and existing under the laws of the State of Alabama, having its office and principal place of business at Florence, Alabama.

2. Pursuant to an Application, dated October 7, 1935, by plaintiff to The First National Bank of Florence, Florence, Alabama (hereinafter called "the Bank") for a loan in the principal amount of not exceeding $110,000, to be evidenced by a note secured by certain collateral, with the understanding that the Bank would request the Reconstruction Finance Corporation (hereinafter called "the R. F. C.") to agree to purchase a participation in said note, the Bank agreed to lend plaintiff not exceeding $110,000, to be disbursed to plaintiff in deferred portions as requested of the Bank by plaintiff. The R. F. C. is a body corporate, created by the Act of January 22, 1932 (47 Stat. 5), as amended, whose entire capital stock is owned by the United States of America and whose management is vested by said Act in a board of directors consisting of five persons appointed by [fol. 20] the President of the United States by and with the advice and consent of the Senate.

3. On January 30, 1936, for value received, plaintiff executed a note, payable to the Bank, promising to pay $110,000, with interest at 5 per cent per annum, payable semi-annually, with certain collateral as security and containing, *inter alia*, provisions for acceleration of maturity of said note and power of sale upon default of plaintiff with respect to the terms and conditions of said note.

4. On January 30, 1936, plaintiff entered into a mortgage with the Bank as mortgagee, which recites that plaintiff is indebted to the Bank in the principal sum of $110,000, with interest at 5 per cent per annum, payable semi-annually, as evidenced by plaintiff's note of January 30, 1936, and contains, *inter alia*, provisions for acceleration of the maturity of the debt and for foreclosure and power of sale by the mortgagee upon default of plaintiff with respect to the terms and conditions of said note and said mortgage, with power in said mortgagee to bid at such sale

and purchase, if the highest bidder, and power in said mortgagee or owner of the debt and the mortgage, or the auctioneer, upon such sale, to execute a foreclosure deed in the name of plaintiff, said mortgage being recorded in Vol. 259, pages 248-256, Lauderdale County, Alabama.

5. On or about February 5, 1936, pursuant to the Bank's application to the R. F. C. for an agreement to purchase a participation in plaintiff's note of January 30, 1936, the R. F. C. entered into a Participation Agreement with the Bank, providing that, upon the making of the loan, not in excess of $110,000, to plaintiff by the Bank, the R. F. C. agreed to purchase 66⅔ percent interest in plaintiff's note, evidencing such $110,000 loan to plaintiff by the Bank, on condition, *inter alia*, that the R. F. C. should receive said note, endorsed without recourse by the Bank to the R. F. C., and transfer of the mortgage of January 30, 1936, as required by Section III of a Resolution of October 16, 1935, of the Executive Committee of the R. F. C.

6. On February 5, 1936, as required by the Participation Agreement of the R. F. C., the Bank endorsed plaintiff's said note, which was delivered to the R. F. C., and also ex- [fol. 21] ecuted a Transfer of Mortgage, reciting that the Bank, for value received, "grants, bargains, sells, conveys, assigns, and delivers" to the R. F. C., its successors and assigns, all its right, title, and interest in the mortgage entered into by plaintiff on January 30, 1936, together with the debt there secured, the notes therein described, and the land and property therein conveyed, to have and to hold unto the R. F. C., its successors and assigns, forever, said Transfer of Mortgage being recorded in Vol. 260, pages 441-442, Lauderdale County, Alabama.

7. On March 2, 1936, following advice of a certificate of February 3, 1936, executed by the Federal Reserve Bank, Birmingham, Alabama, as Custodian of the R. F. C. and stating that all documents, including the endorsed note and Transfer of Mortgage, had been received from the Bank by said Custodian in satisfactory form, the R. F. C. executed, and delivered to the Bank, a Certificate of Interest, reciting that, as provided in the Participation Agreement, the Bank had made the loan to plaintiff, as evidenced by plaintiff's note, and the R. F. C. had purchased the participation in said note and had received delivery of said note and the col-

lateral and that the Bank had retained an interest in said note and the collateral so delivered, in a principal amount equal, at any given time, to 33⅓ percent of the unpaid principal amount of said note disbursed until such time.

8. By on or about August 15, 1936, all of the principal amount of the loan not exceeding $110,000 made by the Bank to plaintiff, to wit, $110,000, including the 66⅔ percent participation of the R. F. C. therein, was disbursed by the Bank to and received by plaintiff.

9. On March 25, 1939, upon and after default of plaintiff with respect to the terms and conditions of its note and mortgage of January 30, 1936, and after demand by the R. F. C. that plaintiff comply therewith, and pursuant to an Authorization of February 13, 1939, of the Executive Committee of the R. F. C. to accelerate the maturity of plaintiff's said note, and to take steps to foreclose all hypothecations of collateral securing the loan evidenced by said note, the R. F. C. served due and proper Notice of Acceleration of [fol. 22] said note on plaintiff, receipt thereof being acknowledged by J. T. Flagg, plaintiff's president, on said date.

10. On July 12, 1939, there was due and owing from plaintiff to the R. F. C. and the Bank $108,194.06, of which 66⅔ percent or $72,129.38 was the share of the R. F. C. and 33⅓ percent or $36,064.68 was the Bank's share.

11. On July 12, 1939, foreclosure of plaintiff's mortgage of January 30, 1936, was instituted by the R. F. C. in the joint names of the R. F. C. and the Bank and, at the foreclosure sale, the R. F. C. and the Bank became joint purchasers of the property listed as collateral security for plaintiff's debt, the bid and purchase price being the sum of $100,000, and as the result of such foreclosure sale, the R. F. C. received a 66⅔ percent or $66,666.67 interest and the bank received a 33⅓ percent or $33,333.33 interest in the acquired property, as shown by a Foreclosure Deed executed in behalf of plaintiff by Crampton Harris as Auctioneer and Attorney in Fact on July 17, 1939, and recorded, on July 18, 1939, in Vol. 288, pages 206-212, Lauderdale County, Alabama.

12. Expenses incidental to said foreclosure sale, which were properly disbursed by the R. F. C. and the Bank and

are properly chargeable to plaintiff under the terms and conditions of its note and mortgage of January 30, 1936, were incurred by the R. F. C. and the Bank in the sum of $751.19 and plaintiff has failed to reimburse the R. F. C. and the Bank therefor.

13. On July 12, 1939, after crediting plaintiff with the $100,000 purchase price paid for its property by the R. F. C. and the Bank on the foreclosure sale, there remained due and owing from plaintiff to the R. F. C. and the Bank $8,945.25, representing the unpaid balance of said Note plus said expenses incidental to said foreclosure sale, of which 66⅔ percent or $5,963.51 was the share of the R. F. C. and 33⅓ percent or $2,981.74 was the Bank's share. Plaintiff is, and since July 12, 1939, has been indebted to the R. F. C. in the amount of $5,963.51 plus interest at 5 percent per annum from July 12, 1939.

14. On February 5, 1942, following the filing of plaintiff's claim with the Collector of Internal Revenue for the Dis- [fol. 23] trict of Alabama for a refund of processing and floor stock taxes paid by it under the Agricultural Adjustment Act, which was allowed by the Commissioner of Internal Revenue in the amount of $3,104.87, a final closing agreement, under Section 506 of the Revenue Act of 1936, was accepted by the Acting Commissioner of Internal Revenue and, by letter of April 29, 1942, Deputy Commissioner of Internal Revenue Mooney advised plaintiff that, unless plaintiff was indebted to the United States Government, a check for such refund would issue to it.

15. On or about August 17, 1942, the Treasurer of the United States issued check No. 164,745, payable to plaintiff in the amount of $3,104.87, which check was stopped and recalled from plaintiff by telegram, dated August 26, 1942, of the Chief Disbursing Officer, Treasury Department, who informed plaintiff that the check should have been drawn to the order of the R. F. C. to liquidate partially the indebtedness of plaintiff to the R. F. C.

16. On September 2, 1942, after the return of said check by plaintiff, a reissued check, bearing the same number, date, and amount and drawn to the order of the R. F. C., was transmitted to the R. F. C. by the Treasurer of the United States, said reissued check being in accord with Certificate of Settlement No. 0690274, dated August 11, 1942,

of the General Accounting Office, which directed issuance of the check in settlement of plaintiff's claim for the refund to the R. F. C. to liquidate partially the indebtedness of plaintiff in the amount of $5,963.51, plus interest at 5 percent from July 12, 1939, due the R. F. C.

17. On September 2, 1942, the R. F. C. allowed plaintiff a credit or deduction of $3,104.87 in its accounts relating to plaintiff's indebtedness to the R. F. C. Plaintiff's said claim for a refund of processing and floor stock taxes paid by it under the Agricultural Adjustment Act was not at any time pledged, in whole or in part, by it as collateral security for its note and mortgage of January 30, 1936.

18. If the defendant was entitled to withhold said sum of $3,104.87 from plaintiff and to apply it as a credit or set-off to plaintiff's indebtedness to the R. F. C., the defendant is entitled to judgment against plaintiff for the sum of $2,858.64 plus interest at 5 percent per annum on $5,963.51 from [fol. 24] July 12, 1939, to September 2, 1942, and also interest at 5 percent per annum on $2,858.64 from September 2, 1942, to date of judgment herein, together with interest at 6 percent per annum on such computed sum until the judgment is paid.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes, as a matter of law, that the plaintiff is not entitled to recover and its petition is therefore dismissed.

The court further concludes that the United States is entitled to recover against the plaintiff on its counterclaim the sum of $2,858.64, with interest.

It is therefore adjudged and ordered that the defendant recover judgment against plaintiff in the sum of $2,858.64 plus interest at 5 percent per annum on $5,963.51 from July 12, 1939, to September 2, 1942, and also interest at 5 percent per annum on $2,858.64 from September 2, 1942, to date of judgment herein, together with interest at 6 percent per annum on such computed sum until the judgment is paid. The entry of judgment is suspended to await the filing of a computation by the parties of the amount of interest to be included in the judgment.

Judgment is also rendered against the plaintiff in favor of the defendant for the cost of printing the record in this case,

the amount thereof to be ascertained by the clerk and collected by him according to law.

Opinion

Madden, *Judge*, delivered the opinion of the court:

The plaintiff in 1936 made an application to The First National Bank of Florence, Florence, Alabama, for a loan of $110,000, to be evidenced by a note secured by certain collateral, with the understanding that the bank would request the Reconstruction Finance Corporation to agree to purchase a participation in the note. As a result of the negotiations, as set forth at length in the special findings of fact, the plaintiff executed a note for $110,000.00, with interest at 5 percent per annum and mortgaged certain securities [fol. 25] therefor. The bank made the loan secured by the mortgage and the R. F. C. purchased a two-thirds interest in the loan. There was a default by the plaintiff and the mortgage was foreclosed in 1939, and the mortgaged assets were bid in by the bank and the R. F. C. for $100,000.00, and the R. F. C. received a sixty-six and two-thirds interest and the bank the other thirty-three and one-third interest in those assets. There remained due to the R. F. C. and the bank in their respective interests of two-thirds and one-third, the sum of $8,945.25—$5,963.51 to the R. F. C. and $2,981.74 to the bank.

The plaintiff had paid processing and floor stock taxes as a cotton processor under the Agricultural Adjustment Act to the Collector of Internal Revenue for the District of Alabama in the sum of $3,104.87. The plaintiff, after the Agricultural Adjustment Act was declared unconstitutional, filed a claim for this amount, and a check dated August 17, 1942, was issued to it in payment of its claim. This check was stopped by the Disbursing Officer of the Treasury and, under the direction of the General Accounting Office, a check was issued to the R. F. C. in partial liquidation of the indebtedness of the plaintiff to the R. F. C., leaving a balance of $2,858.64 remaining due to the R. F. C. upon the debt of $5,963.51 which the plaintiff owed it.

No part of the processing and floor stock tax had been included in the collateral given to the bank or the R. F. C. to secure the original loan. Whether or not the plaintiff had paid the Florence Bank the $2,981.74 which it had owed the

Bank since 1939, when this set-off was made, or has paid it since that time, we are not informed.

The foregoing recital shows the following facts: In 1942 the plaintiff was indebted to the R. F. C. in the sum of $5,963.51, and the Government was indebted to the plaintiff in the sum of $3,104.87. A check to pay the latter debt was issued by the Government, but, before it was cashed, the plaintiff's debt to the R. F. C. came to the attention of the officers of the Government, and the check was recalled from the plaintiff and another check, for the same amount, payable to the R. F. C. was issued to and collected by the R. F. C. It credited the plaintiff with the payment of $3,104.87 upon the plaintiff's debt to it.

[fol. 26] We think that the plaintiff should not, in these circumstances, have a judgment against the Government. The effect of the payment of such a judgment would be to cancel the credit which the R. F. C. has given the plaintiff upon its debt to it, and restore the plaintiff's debt to the R. F. C. to its former amount, $5,963.51. The plaintiff's net worth would be exactly the same as it is now, and, since its debt to the R. F. C. is long past due, it would be, as it has long since been, under a duty to pay the R. F. C. not only the $3,104.87 which it would recover from the Government, but enough more to discharge its debt in full to the R. F. C. If it did its duty in this regard, the $3,104.87 would then be, in effect, where it is now, i.e. among the assets of the United States. So our exercise of our functions would have been a sheer waste of the time and energy of ourselves and of those who have participated in this litigation on the part of the plaintiff and the Government. Only by assuming that the plaintiff will take the judgment money and will not pay its debt to the Government could we say that a judgment for the plaintiff had accomplished anything other than circumlocution, and, on this assumption, our accomplishment would seem to have been less than worthy of our effort.

The R. F. C. is an agent of the Government, a device for accomplishing the Government's purposes with the Government's money. The text of the statute creating the R. F. C., 47 Stat. 5, 15 U. S. C. 601-617, makes this plain. The Government's assets and credits stand behind the R. F. C.'s obligations, and the R. F. C.'s losses are the Government's losses. Debts owing to the R. F. C. are owed to it as agent and trustee for the Government. We use the word trustee since the R. F. C. does have the legal capacities of a separate

legal person, to own property and to sue and be sued. But these powers and capacities are held by it in trust for the benefit of one sole beneficiary, the Government. Looking through the trust, the assets and claims held by the R. F. C. are, in substance and in equity, assets and claims of the Government which are kept, for convenience, in a different receptacle from the one in which the Government keeps most of its money, viz, the Treasury.

Cases holding that the R. F. C. is liable for costs, as other [fol. 27] litigants are, *Reconstruction Finance Corporation* v. *J. G. Menihan Corp.*, 312 U. S. 81, or that the Federal Housing Administration is subject to garnishment under state law for wages due to an employee, *Federal Housing Administration* v. *Burr*, 309 U. S. 242, are not of significance in the solution of our problem. The Supreme Court in those cases was only deciding what Congress meant when it endowed Government corporations with the capacity to sue and be sued. It held that Congress intended that they could be sued like private persons, and that sovereign immunity from suit was waived. But no court has decided that Congress has shown any intention that the United States must pay out money to one who is indebted to it, through its agent and trustee, in a greater amount on a debt past due. That would not be a waiver of sovereign immunity, but a subjection of the sovereign's finances to risks and inconveniences to which no private person is by law subjected.

We do not regard as material the part which the General Accounting Office played in the transactions here in question. We think it was the duty of someone, on behalf of the Government, to see that this set-off was made. Whether the statute defining the functions of the Comptroller General lodged that duty there, or not, is a matter which would seem to be no concern of the plaintiff. It had no right to collect money from the United States when it owed a past due debt to the United States. How the Government, inside its own organization, took care that its right of set-off should not be overlooked, in its multiplicity of transactions, is not material. In short, we think that the money for which the plaintiff sues is now where it rightfully and lawfully belongs, and should stay there.

We have given the Government a judgment on its counterclaim for the balance, above the $3,104.87 already set off and credited to the plaintiff, which the plaintiff owes the R. F. C.

The R. F. C. could not have sued in this court for that balance. But the plaintiff has in this court sued the R. F. C.'s principal and beneficiary, the United States, so we have the real parties in interest before us. We see no reason why we should not, in the rational and economical administration of justice, dispose of their claims completely. When the [fol. 28] plaintiff pays the United States the judgment which we have given the United States on its counterclaim, the plaintiff will, of course, have a complete defense against any claim by the R. F. C., and will not be concerned about how the Treasury and the R. F. C. record the transaction on their books.

In the case of *Crane, et al., Receivers*, v. *United States*, 73 C. Cls. 677, certiorari denied 287 U. S. 601, this court allowed the United States to recover a judgment on a counterclaim against a plaintiff who sued for the refund of taxes, and who had given a bond to the United States Shipping Board Emergency Fleet Corporation. It held that whether or not the Fleet Corporation was an entity separate from the United States was immaterial. The contract which the bond was given to secure, recited that the Fleet Corporation was representing and acting for and on behalf of the United States. In the case of *John Morrell and Company* v. *United States*, 89 C. Cls. 167, this court held that the fact that a contract made by the Federal Surplus Relief Corporation did not disclose that it was acting as the agent of the United States, was immaterial since the facts concerning its agency were apparent from the statute creating it, and from the known purpose of its organization. We think those cases were rightly decided.

The defendant may recover upon its counterclaim. Entry of judgment will be suspended to await the computation of the amount of the interest to be included in the judgment.

It is so ordered.

Littleton, Judge; and Whitaker, Judge, concur.

Whaley, Chief Justice, dissents.

Jones, Judge, took no part in the decision of this case.

[fols. 29-30] STIPULATION RELATIVE TO COMPUTATION AND ENTRY OF JUDGMENT

On March 17, 1945, the parties filed a stipulation in accordance with the Court's decision and opinion of March 5, 1945, which is as follows:

Stipulation

For the purpose of enabling the computation and entry of judgment to be made in the above-entitled cause in accordance with the Court's decision and opinion of March 5, 1945 relating to said cause, it is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, as follows:

1. Interest at 5 per cent per annum on $5,963.51 from July 12, 1939 to September 2, 1942 amounts to $937.82.

2. Interest at 5 per cent per annum on $2,858.64 from September 2, 1942 to April 2, 1945 amounts to $369.27.

3. The total amount of interest to April 2, 1945, to be included in said judgment, is $1,307.09.

4. The total amount of the judgment to be recovered herein by defendant against plaintiff is $4,165.73, as computed pursuant to the court's decision of March 5, 1945 herein.

[fols. 31-32] 5. If the Court shall fail to enter judgment herein on April 2, 1945, this stipulation shall be void and of no effect whatsoever and a new stipulation based on a new computation to conform with any other date of entry of judgment herein selected by the Court shall be made by the parties hereto and submitted to the Court for the purpose hereinbefore stated.

Theodore B. Benson, Attorney for Plaintiff. Francis M. Shea, Assistant Attorney General; Julian R. Wilheim, Attorney, Attorneys for the United States of America.

[fols. 33-34] ORDER OF THE COURT ENTERING JUDGMENT

At a Court of Claims held in the City of Washington on the 2nd day of April, A. D., 1945, the Court filed an order entering judgment which is as follows:

Order

This case comes before the court on a stipulation of the parties, and it appearing that on March 5, 1945, the court filed special findings of fact with an opinion dismissing the petition and entering judgment against the plaintiff in favor of the defendant on its counterclaim with interest thereon, but suspended the entry of judgment to await the filing of a computation by the parties showing the exact amount due from the plaintiff in accordance with the court's decision; and it further appearing that on March 17, 1945, a stipulation was filed signed on behalf of the plaintiff by Theodore B. Benson, and on behalf of the defendant by Assistant Attorney General Francis M. Shea, in which it is stated that

> • • • it is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, as follows:
>
> 1. Interest at 5 per cent per annum on $5,963.51 from July 12, 1939 to September 2, 1942 amounts to $937.82.
>
> 2. Interest at 5 per cent per annum on $2,858.64 from September 2, 1942 to April 2, 1945 amounts to $369.27.
>
> [fols. 35-36] 3. The total amount of interest to April 2, 1945, to be included in said judgment, is $1,307.09.
>
> 4. The total amount of the judgment to be recovered herein by defendant against plaintiff is $4,167.73, as computed pursuant to the Court's decision of March 5, 1945 herein,—now, therefore, on consideration of the foregoing stipulation

It Is Ordered this 2nd day of April, 1945, that judgment be and the same is entered against the plaintiff and in favor of the United States on its counterclaim in the principal sum of $2,858.64 with interest thereon at 5% per annum from September 2, 1942 to April 2, 1945, amounting to $369.27, and interest at 5% per annum on $5,963.51 from

July 12, 1939 to September 2, 1942, amounting to $937.82, a total judgment of four thousand one hundred sixty-five dollars and seventy-three cents ($4,165.73), together with interest thereon at 6% per annum from April 2, 1945 until paid.

By the Court, Richard S. Whaley, Chief Justice.

[fol. 37] Clerk's Certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 49,890. Court of Claims. Term No. 187. Cherry Cotton Mills, Inc., Petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed July 2, 1945. Term No. 187 O. T. 1945.

[fol. 38] Supreme Court of the United States

Order Allowing Certiorari—Filed October 15, 1945

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 187

CHERRY COTTON MILLS, INC.,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

THEODORE B. BENSON,
Counsel for Petitioner.

TABLE OF CONTENTS

TABLE OF CASES AND STATUTES

Cases:

Statutes:

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 187

CHERRY COTTON MILLS, INC.,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Cherry Cotton Mills, Inc., prays that a writ of certiorari be issued to review the judgment of the Court of Claims of the United States, entered April 2, 1945, against the petitioner and in favor of the Reconstruction Finance Corporation and in favor of the United States on its counterclaim (R. 20-21).

The certified transcript of the record in this case is furnished herewith in accordance with Rule 41 of the Rules of this Court.

The Decision Below

The special findings are printed in the record, pages 9 to 14, the majority opinion, pages 15 to 18. Chief Justice

Whaley dissented but wrote no opinion. The order for the entry of judgments in favor of the Reconstruction Finance Corporation for the tax refund and in favor of the United States on its counterclaim, pages 20-21.

Jurisdiction

The judgment of the Court of Claims was entered April 2, 1945. The jurisdiction of the Court is invoked under the Act of February 13, 1925, c. 229, Section 3, 43 Stat. 939, as amended May 22, 1939, 53 Stat. 752, 28 U. S. C. 288 (b).

The Questions Presented

The questions presented are:

1. Is an indebtedness of the petitioner to the Reconstruction Finance Corporation a debt due the United States which can be set off against an overpayment of processing and floor-stock taxes?

2. Does the Court of Claims have jurisdiction to enter judgment in favor of the Reconstruction Finance Corporation for the amount of the overpayment of the taxes?

The subsidiary or underlying questions are the nature of the Reconstruction Finance Corporation, whether the "body corporate" [1] is a corporation or a "department or establishment" [2] of the Government, and whether a claim by it is a claim "on the part of the Government of the United States" [3] of which the Court of Claims has jurisdiction on the counterclaim of the United States.

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[1] The Reconstruction Finance Corporation Act of January 22, 1932, 47 Stat. 5, 15 U. S. C. 601.

[2] Section 2 of the Budget and Accounting Act as amended April 3, 1939, 53 Stat. 565, 31 U. S. C. 2.

[3] Section 145 of the Judicial Code, Act of March 3, 1911, 36 Stat. 1137, 28 U. S. C. 250.

Summary Statement of the Matter Involved

The petitioner is a cotton processor and filed a claim for refund of processing and floor-stocks taxes paid under the unconstitutional Agricultural Adjustment Act. The claim for refund was allowed by the Commissioner of Internal Revenue in the amount of $3,104.87 and scheduled for credit or refund. A final closing agreement under Section 506 of the Revenue Act of 1936 was accepted and signed by the Acting Commissioner and the petitioner was advised that, unless it was indebted to the United States Government, a check would issue. The treasurer of the United States issued a check, but payment was stopped. The Comptroller General, in his advice of payment of settlement to accompany the check, had certified that a check for the amount should issue in favor of the Reconstruction Finance Corporation in partial liquidation of a debt due the corporation. The Treasurer then issued his check payable to the Reconstruction Finance Corporation, which corporation still has the fund.

The indebtedness arose as the result of the corporation's having purchased partition in a mortgage note made by the petitioner to a national bank, as evidence of a loan made by the bank, which note, secured by the pledge of property other than the tax refund, had not been paid in full and the corporation had under partition with the bank a claim against the petitioner in the amount of $5,963.51 on the note.

The petitioner sued for the tax refund, the United States filed its counterclaim and the Court of Claims entered judgment for the United States for the excess of the indebtedness to the Reconstruction Finance Corporation over the amount paid to the corporation. The judgment entered is, in effect, that the Reconstruction Finance Corporation take the $3,104.87 tax refund from the United States and that

the United States take the unpaid balance of its indebtedness from the petitioner to the Reconstruction Finance Corporation.

Specification of Errors

The court below erred:

1

In entering judgment that the Reconstruction Finance Corporation should retain from the Treasury of the United States the amount of the tax refund due the petitioner.

2

In entering judgment for the United States in an amount equal to the unpaid indebtedness of the petitioner to the Reconstruction Finance Corporation.

Reasons for the Allowance of the Writ

In purchasing participation in the note evidencing the loan made by the national bank, the Reconstruction Finance Corporation was not acting "as a financial agent of the Government,"[4] but in its own name and right. The corporation acted as principal and in such capacity acquired part ownership in the note made by the petitioner. The

[4] In Section 12 of the Act, 47 Stat. 10, 15 U. S. C. 612, there is the provision that the corporation "may also be employed as a financial agent of the Government," apparently by the Secretary of the Treasury. The corporation was not so employed here but was acting in its own name and as principal and was not employed as an agent. In Section 3 of the Contract Settlement Act of 1944, 58 Stat. 650, 41 U. S. C. 103, the term "contracting agency" is defined to include the Reconstruction Finance Corporation.

While in Section 3 the corporation is made a "contracting agency," in Section 13(b)(2) of the Act, 58 Stat. 660, 41 U. S. C. 113, Congress clearly recognized the distinction between a suit against the United States in the Court of Claims or in a district court, for an amount less than $10,000, and a suit against the Reconstruction Finance Corporation and provided

petitioner became indebted to the bank and to the corporation, not to the United States. There arose no debt due the United States, or any department or establishment thereof, which the Comptroller General had authority to recover,[5] nor any claim or demand by the Government of

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that "if the contracting agency is the Reconstruction Finance Corporation • • • the suit shall be brought against such corporation in any court of competent jurisdiction in accordance with existing law." The corporation can not be sued in the Court of Claims. Thus has the Congress restated and interpreted the existing law and followed the conclusions of this Court in *Reconstruction Finance Corporation* v. *J. G. Menihan Corp.*, 312 U. S. 81, 61 S. Ct. 485, 85 L. Ed. 595, that, while the corporation is declared to be a governmental agency, it is to sue and be sued as a private corporation.

Under this most recent provision, the corporation is to be sued as a private corporation, whether or not acting as an agency of the United States.

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[5] The Commissioner of Internal Revenue determined the tax refund and payment was diverted to the Reconstruction Finance Corporation by the Comptroller General, whose office was created by the Budget and Accounting Act of 1921, 42 Stat. 23, 31 U. S. C. 41, with power to settle and adjust:

> All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor • • • (42 Stat. 24, 31 U. S. C. 71).

In Section 304 of the Act, 42 Stat. 24, 31 U. S. C. 93, there is the provision that:

> The General Accounting Office shall superintend the recovery of all debts finally certified by it to be due to the United States.

In the Federal Loan Agency Administration Act of February 24, 1945, 79th Cong., 1st Session, Pub. No. 4, Section 5(a), there is the provision that:

> The financial transactions of all Government corporations shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States.

the United States within the jurisdiction of the Court of Claims.[6]

The Comptroller General, in certifying in his advice of settlement that the check for the tax refund should issue to the Reconstruction Finance Corporation, has assumed to exercise an authority not conferred on him by the Congress and never previously attempted by him. If the Comptroller General had authority to direct that a debt due the Reconstruction Finance Corporation should be paid by the application of a debt due the petitioner by the United States, then he can extend his authority to the collection of debts due all Government owned corporations and apply accounts and debts of the one against the other. This would lead merely to confusion. The Reconstruction Finance Corporation now does not know how to record and account for the $3,104.87 paid to it by the Treasury Department from an appropriation for the purpose of making tax refunds.

The rights of all persons having claims against the United States, for tax refunds or other causes, who may have had dealings with governmental corporations will be affected by the newly assumed authority of the Comptroller General.

The petitioner submits that this Court should decide what authority the Comptroller General has to direct the collection of the debts due governmental corporations and what authority he has to apply the amount of a debt due

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[6] Section 145 of the Judicial Code provides:

> The Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> First. All claims • • • against the United States • • •.
>
> Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part *of the Government of the United States* against any claimant against the Government in said court: • • •. (36 Stat. 1136, 7, 28 U. S. C. 250).

by the United States to a claimant to a debt due by the claimant to a Government owned corporation, or it may be the other way around. The question here presented is one of first impression and is certainly one of great importance and of great interest to the various governmental corporations and agencies. From inquiries received in connection with the pending case, counsel believes that he can state that they need the decision of this Court for their guidance. In *Keifer and Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381, 59 S. Ct. 516, 83 L. Ed. 784, Mr. Justice Frankfurter stated that there are forty such corporations recently created.

The petitioner sued the United States for the tax overpayment. The United States filed its counterclaim and set up the indebtedness of the petitioner to the Reconstruction Finance Corporation. That corporation was not a party to the suit. The Court of Claims approved the action of the Comptroller General in applying the tax refund to the indebtedness of the petitioner to the Reconstruction Finance Corporation and, in fact, rendered judgment in favor of the corporation in the amount of $3,104.87 and gave the United States judgment for the balance of the indebtedness of the petitioner to the corporation. The judgment entered by the Court of Claims gives rise to serious questions, both as to its jurisdiction and as to the proper parties, and for that reason should be reviewed by this Court.

The court below exceeded its jurisdiction in entertaining the counterclaim. Under Section 145 of the Judicial Code, in suits against the United States, the jurisdiction of the Court of Claims is limited to the hearing and determining of counterclaims or other demands "on the part of the Government of the United States". 36 Stat. 1137, 28 U. S. C. 250 (2). There is here no claim on the part of the United States, but on the part of the Reconstruction Finance Cor-

poration, a body corporate, with power to sue and be sued in its own name and right. The decision below is in direct conflict with that of this Court in *Reconstruction Finance Corporation* v. *J. G. Menihan Corp.*, 312 U. S. 81, 61 S. Ct. 485, 85 L. Ed. 595, holding that the Reconstruction Finance Corporation, itself, has power "to sue and be sued," and citing *Keifer and Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381, 59 S. Ct. 516, 83 L. Ed. 784. The Reconstruction Finance Corporation was created by the Reconstruction Finance Corporation Act of January 22, 1932, Section 1, 47 Stat. 5, 15 U. S. C. 601, which, as of importance, provided:

> There is hereby created a body corporate with the name 'Reconstruction Finance Corporation' * * *.

If the Reconstruction Finance Corporation can sue in the proper Federal or state court and is the proper party to recover debts due it, then the United States is not the proper party and the court below should not have entertained the counterclaim. The court below erred in entering judgment in favor of the Reconstruction Finance Corporation. While the corporation may sue in the proper Federal or state court, it can, of course, not sue in the Court of Claims. The judgment of the court below is contrary to the statute.

This Court has held in a number of cases that the Reconstruction Finance Corporation, while it acts as a governmental agency in performing its functions, its transactions are akin to those of a private enterprise, with the power "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal," and that in suing and being sued the corporation is subject to the ordinary, natural and appropriate incidents of litigation as is a private party in similar circumstances. See the opinion by Chief Justice Hughes, in *Reconstruction*

Finance Corporation v. *J. G. Menihan Corp.*, 312 U. S. 81, 61 S. Ct. 485, 85 L. Ed. 595, citing *Pittman* v. *Home Owners Loan Corporation*, 308 U. S. 21, 60 S. Ct. 15, 84 L. Ed. 11, 124 A. L. R. 1263; *Sloan Shipyards* v. *United States Fleet Corporation*, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762; *Keifer and Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381, 59 S. Ct. 516, 83 L. Ed. 784. The most recent decision of this Court on the question involved is the *Brady* v. *Roosevelt Steamship Co.* case, 317 U. S. 575, 63 S. Ct. 425, 87 L. Ed. 471, approving the *Keifer and Keifer* case.

The holding of the court below is in direct conflict with the decision of this Court in the *Sloan Shipyards* case. There the contention was made and the District Court did hold, 268 Fed. 624, that the United States Shipping Board Emergency Fleet Corporation, incorporated pursuant to act of Congress under the laws of the District of Columbia, is merely an instrumentality created by the United States, acting in its sovereign capacity for executing the purposes of the Shipping Board Act, and that a suit against it is a suit against the United States, not maintainable in a District Court where the amount involved exceeds $10,000. On appeal, the District Court was reversed, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762, this Court finding:

> The Shipping Act contemplated a corporation in which private persons might be stockholders and which was to be formed like any business corporation under the laws of the District, with capacity to sue and be sued. The United States took all the stock, but that did not affect the legal position of the company.

The decision below is also in conflict with that of this Court in *U. S. ex rel. Skinner and Eddy Corp.* v. *McCarl*, 275 U. S. 1, 48 S. Ct. 12, 72 L. Ed. 131.

This Court held in Sloan Shipyards that the Fleet Corporation could be sued in the district court, not sitting as

the Court of Claims, as a private corporation. The Reconstruction Finance Corporation had, and in fact still has, the right to sue the petitioner for the full amount of the petitioner's indebtedness to it, regardless of any decision by the Court of Claims in a suit to which it was not a party. The Court of Claims has clearly exceeded its jurisdiction in entering judgment in favor of the Reconstruction Finance Corporation.

Conclusion

The decision below was by a mere majority, four Judges sitting and the Chief Justice dissenting without opinion.

The petitioner submits that the several questions here presented, the extent of the authority of the Comptroller General, the jurisdiction of the Court of Claims and the proper party to sue or be sued, are each of public importance and concern the meaning of recent acts of the Congress, and not having heretofore been directly before this Court should be considered and passed on by this Court and that for that purpose, the petitioner prays that its application be granted.

THEODORE B. BENSON,
817 Southern Building,
Washington, D. C.,
Counsel for Petitioner.

Supreme Court of the United States

October Term, 1945.

No. 187.

CHERRY COTTON MILLS, INC., Petitioner,

v.

THE UNITED STATES.

BRIEF FOR PETITIONER.

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CHARLES W. WARDEN, WASHINGTON REPRESENTATIVE,
TOWER BUILDING

INDEX.

CITATIONS.

Supreme Court of the United States

October Term, 1945.

No. 187.

CHERRY COTTON MILLS, INC., Petitioner,

v.

THE UNITED STATES.

BRIEF FOR PETITIONER.

Statement of the Case.

This is a suit brought by the petitioner in the Court of Claims to recover $3,104.87 processing and floor-stocks taxes overpaid, which the Comptroller General had certified should be paid to the Reconstruction Finance Corporation. The United States filed its counterclaim, setting up an indebtedness of the petitioner to the Reconstruction Finance Corporation in the amount of $5,963.51 (R. 4). The Court of Claims entered its judgment that the Reconstruction Finance Corporation retain the $3,104.87 and that the United States recover the sum of $2,858.64 on its counterclaim (R. 14, 20).

This Court granted a writ of certiorari October 15, 1945, to review the decision of the court below.

I.

Opinion of the Court Below.

The opinion of the court below was rendered March 5, 1945, and the final order was entered April 2, 1945. The opinion has been reported in 59 F. Supp. 122, 103 Ct. Cls. ...., and is a part of the record on this appeal (R. 9-21).

II.

Jurisdiction.

This Court has heretofore granted a writ of certiorari under the provisions of the Act of February 13, 1925, c. 229, Section 3, 43 Stat. 939, as amended May 22, 1939, 53 Stat. 752, 28 U. S. C. 288(b).

The date of the judgment of the Court of Claims sought to be reversed is April 2, 1945 (R. 20). The petition applying for the writ of certiorari was filed July 2, 1945 and was granted October 15, 1945.

III.

Summary Statement of the Facts.

The case was heard by the Court of Claims on the stipulation of facts entered into by the parties. The court found the facts as agreed to (R. 10 to 14). There follows a summary statement of those facts.

The petitioner was a cotton producer and filed a claim for the refund of processing and floor-stocks taxes paid under the unconstitutional Agricultural Adjustment Act. The claim for refund was allowed by the Commissioner of Internal Revenue in the amount of $3,104.87 and scheduled for credit or refund. A final closing agreement under Section 506 of the Revenue Act of 1936 was accepted and

signed by the Acting Commissioner and the petitioner was advised that, unless it was indebted to the United States Government, a check would issue. The Treasurer of the United States issued a check payable to the petitioner in the amount of $3,104.87, but payment of the check was stopped.

The petitioner had on October 7, 1935, made application to The First National Bank of Florence, Florence, Alabama, for a loan in the amount of $110,000.00 to be evidenced by a note secured by certain collateral, which did not include the claim for refund of taxes. The application was granted and the Reconstruction Finance Corporation agreed to and did purchase a 66 2-3 per centum participation in the note made to the bank and dated January 30, 1936. The note, endorsed in blank by the bank, was delivered to the Corporation and an underlying mortgage was transferred as required by a resolution of the Executive Committee of the Reconstruction Finance Corporation dated October 16, 1935. The $110,000.00 was disbursed by the bank to the petitioner.

The petitioner defaulted in payments on the note, notice of acceleration was served on the petitioner and on July 12, 1939, foreclosure proceedings were instituted in the joint names of the Reconstruction Finance Corporation and the bank and they bid in and became joint purchasers of the collateral. The bid price was $100,000.00. The unpaid balance amounted to $8,945.25, of which $5,963.51 was the share of the Corporation.

The Comptroller General of the United States, in his advice of payment of settlement to accompany the $3,104.87 refund check, certified that a check for the amount should issue in favor of the Reconstruction Finance Corporation in partial liquidation of the $5,963.51 due the

Corporation. The Comptroller General certified the unpaid indebtedness on the note as a debt "due to the United States."

The petitioner sued for the tax refund (R. 1). The United States filed its counterclaim and alleged that the Reconstruction Finance Corporation "is a constituent part of the Government of the United States of America" (R. 4, 8). The Court of Claims, holding that the $5,963.51 debt to the Reconstruction Finance Corporation was "owed to it as agent and trustee for the Government", entered judgment that the Reconstruction Finance Corporation retain the $3,104.87 and entered judgment in favor of the United States for the excess of the $5,963.51, indebtedness of the petitioner to the Corporation resulting from the participation in the petitioner's note, over the $3,104.87 (R. 14, 20).

IV.

The Statutes Involved.

The authority of the Commissioner of Internal Revenue to remit, refund, and pay back taxes, other than income, estate and gift taxes, erroneously or illegally assessed or collected, is to be found in Section 3220 of the Revised Statutes, 45 Stat. 996, re-enacted as Section 3770 of the Internal Revenue Code. The pertinent provision of the section is:

> * * * the Commissioner, subject to regulations prescribed by the Secretary, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected * * *.

Following the decision of this Court in Butler v. U. S. 297 U. S. 1, 56 S. Ct. 312, 80 L. Ed. 477, the Congress sought to prevent the refund of the processing and floor-stocks taxes that, within the wording of Section 3220 of the Re-

vised Statutes, had been erroneously or illegally assessed or collected, and in Section 902 and succeeding sections of the Revenue Act of 1936 imposed conditions on the allowance of refunds. These conditions were met and the provisions of the 1936 Act need not be repeated here. A claim for refund was filed and allowed and suit brought within the requirements of Section 3226 of the Revised Statutes, Section 3772 of the Internal Revenue Code.

The General Accounting Office was created by the Congress in the Budget and Accounting Act of 1921. In Section 301, 42 Stat. 23, 31 U. S. C. 41, the Congress provided:

> There is created an establishment of the Government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States.

The powers possessed by the General Accounting Office and by the Comptroller General are to be found in Section 305 of the Budget and Accounting Act, 31 U. S. C. 71, which, as of importance here, are:

> All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.

and in Section 304, 31 U. S. C. 93:

> The General Accounting Office shall superintend the recovery of all debts finally certified by it to be due to the United States.

In Section 2 of the Budget and Accounting Act, as amended April 3, 1939, 53 Stat. 565, 31 U. S. C. 2, the Congress has for the purpose of the enforcement of the Act defined the departments and establishment of the United States to mean and include:

> * * * any executive department, independent commission, board, bureau, office, agency or other establishment of the Government, including any independent regulatory commission or board and the Municipal Government of the District of Columbia * * .

The Reconstruction Finance Corporation was created by the Reconstruction Finance Corporation Act of January 22, 1932, 47 Stat. 5, 15 U. S. C. 601, which, as of importance, is:

> There is hereby created a body corporate with the name 'Reconstruction Finance Corporation' * * *.

Section 2 of the Act, 15 U. S. C. 602, provides that the capital stock of the corporation shall be subscribed by the United States of America and Section 3, 15 U. S. C. 603, provides that the management of the corporation shall be vested in a board of directors consisting of five persons appointed by the President of the United States by and with the advice and consent of the Senate.

In Section 3(g) of the Contract Settlement Act of 1944, 58 Stat. 650, 41 U. S. C. 103, the Reconstruction Finance Corporation is declared to be a contracting agency of the United States. The provision is:

> The term "contracting agency" means any Government agency which has been or hereafter may be authorized to make contracts pursuant to section 201 of the First War Powers Act, 1941, and includes the Reconstruction Finance Corporation and any corporation organized pursuant to the Reconstruction Finance Corporation Act (47 Stat. 5), as amended, the Smaller War Plants Corporation, and the War Production Board.

The provision in Section 13(b)(2) of the Contract Settlement Act, 58 Stat. 658, 41 U. S. C. 113, is that an aggrieved war contractor may:

> bring suit against the United States for such claim or such part thereof, in the Court of Claims or in a United States district court, in accordance with sub-

section (20) of section 24 of the Judicial Code (28 U. S. C. 41 (20)), except that, if the contracting agency is the Reconstruction Finance Corporation, or any corporation organized pursuant to the Reconstruction Finance Corporation Act (47 Stat. 5), as amended, or any corporation owned or controlled by the United States, the suit shall be brought against such corporation in any court of competent jurisdiction in accordance with existing law.

Under Section 145(2) of the Judicial Code, 36 Stat. 1137, 38 U. S. C. 250(2), the Court of Claims has jurisdiction of:

> * * * All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: * * *.

V.

Specification of Errors.

The court below erred:

1

In entering judgment that the Reconstruction Finance Corporation should retain from the Treasury of the United States the amount of the tax refund due the petitioner.

2

In entering judgment for the United States in an amount equal to the unpaid indebtedness of the petitioner to the Reconstruction Finance Corporation.

VI.

The Questions Presented.

The questions presented are:

1. Is an indebtedness of the petitioner to the Reconstruction Finance Corporation a debt due the United States

which can be set off against an overpayment of processing and floor-stock taxes?

2. Does the Court of Claims have jurisdiction to enter judgment in favor of the Reconstruction Finance Corporation for the amount of the overpayment of the taxes?

The subsidiary or underlying questions are the nature of the Reconstruction Finance Corporation, whether the "body corporate"[1] is a corporation or a "department or establishment"[2] of the Government, and whether a claim by it is a claim "on the part of the Government of the United States"[3] of which the Court of Claims has jurisdiction on the counterclaim of the United States.

VII.

Points and Summary of Argument.

POINT I.

The indebtedness of the petitioner to the Reconstruction Finance Corporation is not a debt due the United States which the Comptroller General can recover, nor is it a claim or demand on the part of the Government of the United States of which the Court of Claims has jurisdiction on the counterclaim of the United States.

The petitioner submits that:

(a) The Comptroller General exceeded his authority under the Budget and Accounting Act. In that act the Government of the United States, for which he may re-

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[1] The Reconstruction Finance Corporation Act of January 22, 1932, 47 Stat. 5, 15 U. S. C. 601.

[2] Section 2 of the Budget and Accounting Act as amended April 3, 1939, 53 Stat. 565, 31 U. S. C. 2.

[3] Section 145 of the Judicial Code, Act of March 3, 1911, 36 Stat. 1137, 28 U. S. C. 250.

cover a debt, is defined to include any department, commission, bureau, board, office, agency or other establishment of the Government and, necessarily, to exclude a body corporate such as the Reconstruction Finance Corporation. The Budget and Accounting Act, in its application to the

POINT II.

The Court of Claims did not have jurisdiction to enter judgment in favor of the Reconstruction Finance Corporation.

The Reconstruction Finance Corporation can neither sue nor be sued in the Court of Claims. The Congress has provided and this Court has held that the Corporation may sue as any private corporation in any court, Federal or State, except in the Court of Claims.

VIII.

The Argument.

POINT 1 (a).

The indebtedness of the petitioner to the Reconstruction Finance Corporation is not a debt due the United States, as defined in the Budget and Accounting Act, which the Comptroller General can recover, and, if not a debt due the United States within the meaning of the Budget and Accounting Act, it is not a claim or demand on the part of the Government of the United States within the meaning of Section 145(2) of the Judicial Code. The acts relate to the same subject matter and are to be construed as in pari materia.

The petitioner's claim for the refund of the processing and floor-stocks taxes having been allowed in the amount

of $3,104.87, the Commissioner of Internal Revenue should have proceeded "to remit, refund, and pay back"[1] the amount, unless the petitioner, in turn, was indebted to the United States.

If at the time the petitioner had in fact been indebted to the United States, it would have become the unquestioned duty of the Comptroller General to recover the indebtedness from the petitioner. The Budget and Accounting Act requires that "All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office"[2] and that "The General Accounting Office shall superintend the recovery of all debts finally certified to be due to the United States."[3]

Did the Comptroller General, in certifying in his advice of settlement that the check in payment of the refund should issue in favor of the Reconstruction Finance Corporation, act within or exceed his authority? The question must be answered by reference to the provisions of the Budget and Accounting Act. There, in the clearest possible language, we find it provided that:

1. All claims and demands whatever by the Government of the United States shall be settled, adjusted and recovered by the Comptroller General. His is the sole and exclusive administrative authority.

2. A definition of the Government of the United States, as any executive department, independent commission, board, bureau, office, agency or other estab-

[1] Section 3220 of the Revised Statutes, 45 Stat. 996, I. R. C. Sec. 3770.
[2] Section 305 of the Act, 42 Stat. 24, 31 U. S. C. 71.
[3] Section 304 of the Act, 42 Stat. 24, 31 U. S. C. 93.

lishment of the Government, excluding a Government-owned corporation such as the Reconstruction Finance Corporation.[4]

The court below refused to consider or follow the provisions of the General Accounting Act, but stated "We do not regard as material the part which the General Accounting Office played in the transactions here in question."

The set-off against the $3,104.87 was made by the Comptroller General and could have been made by no one else. His act gave rise to the controversy and the suit.

The question presented in the application for the writ of certiorari is whether or not there exists a debt due the United States which may be pleaded as a counterclaim in the Court of Claims under Section 142(2) of the Judicial Code. The subject matter is, however, the same, a claim or demand on the part of the Government of the United States. If the indebtedness of the petitioner to the Reconstruction Finance Corporation is not a debt due the United States, then the Comptroller General had no authority to make his certification and the Court of Claims had no jurisdiction to entertain the counterclaim.

The petitioner submits that, under the clearly expressed provisions of the Budget and Accounting Act, the Comptroller General exceeded his authority. Under that act, a Government-owned corporation is not a department or establishment of the Government of the United States and an indebtedness to such corporation is not an indebtedness to the Government of the United States.

The jurisdiction of the Court of Claims under Section 145(2) of the Judicial Code, 28 U. S. C. 250(2), is of:

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[4] Section 2 of the Act, as amended April 3, 1939, 53 Stat. 565, 31 U. S. C. 2.

> * * * All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: * * *.

The petitioner submits that the jurisdiction conferred on the Court of Claims by Section 145(2) of the Judicial Code is no broader than that given the General Accounting Office of "all debts finally certified to it to be due to the United States." If the Comptroller General had no authority to make the attempted set-off, then the Court of Claims had no jurisdiction to entertain the counterclaim.

Any demand on the part of the United States which may be the subject of a set-of or counterclaim in the Court of Claims must amount to a claim or demand by the Government of the United States and there can be no claim or demand which can be pleaded as a set-off or counterclaim in the Court of Claims over which the General Accounting Office did not in the first instance have authority.

If the claim of the Reconstruction Finance Corporation against the petitioner is not a claim or demand by the Government of the United States against the petitioner within the meaning of the Budget and Accounting Act, it is not a set-off, counterclaim or other demand on the part of the Government of the United States. This principle was recognized by Mr. Justice Brandeis in U. S. *ex rel.* Skinner and Eddy Corporation v. McCarl, 275 U. S. 1, 48 S. Ct. 12, 72 L. Ed. 133, in which he stated, as a basis for the conclusion that the Emergency Fleet Corporation was a Government-owned private corporation:

> At no time, during the War or since its close, have the financial transactions of the Fleet Corporation passed through the hands of the general accounting officers of the government or been passed upon, as accounts of the United States, either by the Comptroller

> of the Treasury or the Comptroller General. The accounts of the Fleet Corporation * * * have been audited, and the control over their financial transactions has been exercised, in accordance with commercial practice, by the board or the officer charged with the responsibilities of administration.

The Congress has recently provided for the audit of the accounts of Government-owned corporations by the General Accounting Office. The purpose of the act is, as provided, a report to Congress. No authority is conferred on the Comptroller General to settle the claims and demands of Government corporations, nor are they defined or referred to as departments or establishments. An intelligent Congress likened them to ordinary commercial corporations by providing that the audits should be made "in accordance with the principles and procedures applicable to commercial corporate transactions."[5]

In the Budget and Accounting Act, the Congress created an administrative agency to settle, adjust and recover all claims and demands whatever by the United States or against it. In Section 2 of the act, 31 U. S. C. 2, the Congress defined the Government of the United States, its departments and establishments to mean and include:

> * * * any executive department, independent commission, board, bureau, office, agency or other establishment of the Government, including any independent regulatory commission or board and the Municipal Government of the District of Columbia * * *.

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[5] In the Act of February 24, 1945, 12 U. S. C. 1804, the Congress provided:

(a) The financial transactions of all government corporations shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. * * *

(b) A report of each such audit for each fiscal year ending on June 30 shall be made by the Comptroller General to the Congress not later than January 15 following the close of the fiscal year for which such audit is made. * * *

The petitioner submits that, if the Reconstruction Finance Corporation, like the Fleet Corporation, is not a department or establishment of the Government of the United States, within the meaning of the Budget and Accounting Act, then its claim against the petitioner is not a claim on the part of the Government of the United States which can be set-off in the Court of Claims. The authority of the Comptroller General to recover a claim or demand due the Government is certainly as broad as that of the Court of Claims. His authority is of "all claims and demands whatever" by the United States, but by the United States as defined in Section 2 of the act.

The point the petitioner seeks to make is that the Reconstruction Finance Corporation is not a department or establishment of the United States within the statutory definition in the Budget and Accounting Act, the provisions of which should be followed here.

The petitioner submits that, in the enactment of the Budget and Accounting Act, the Congress intended that the Comptroller General should have authority to audit all accounts of the United States, its departments and establishments; while in the enactment of the Reconstruction Finance Corporation Act of January 22, 1932, the Congress intended to create a body corporate, separate and distinct from the United States, not subject to the audit of the Comptroller General as a department or establishment. This was done for reasons of expediency or convenience. It was not necessary for the Congress to have created the Reconstruction Finance Corporation as a separate corporate body if the Congress had intended the corporation to be a department or establishment of the United States Government. The Congress could have authorized the Secretary of the Treasury to make loans to national banks

and railroads or could have created an establishment, board or commission to disburse appropriations. The Reconstruction Finance Corporation was created for the purpose of making loans to private industry. The Congress chose to do this through an independent body corporate, separate from the United States.

The Court's attention is invited to the wording of Section 305 of the Budget and Accounting Act, which is that all claims and demands whatever by the Government of the United States or against it shall be settled and adjusted in the General Accounting Office. Congress was there considering all claims and the provision is that absolutely every claim by the Government of the United States or against it shall be settled and adjusted in the General Accounting Office. In not providing in the Reconstruction Finance Corporation Act that the claims and demands of the Corporation shall be settled by the Comptroller General, Congress clearly meant that a debt due the Reconstruction Finance Corporation was not a claim or demand by the Government of the United States. We are here concerned with the Congressional intent and we are in the field of Government finance and the two acts of Congress must be considered together.

POINT 1 (b).

The indebtedness of the petitioner to the Reconstruction Finance Corporation is not a claim or demand on the part of the Government of the United States which can be pleaded as a set-off or counterclaim under Section 145(2) of the Judicial Code.

If the contention of the petitioner that, under the Budget and Accounting Act, a Government-owned corporation is

not a department or establishment of the Government of the United States is not correct and if the provisions of that act are not to be followed, then it becomes necessary to consider the meaning of Section 145(2) of the Judicial Code and to determine what is a set-off, counterclaim, other claim or demand "on the part of the Government of the United States against any claimant against the Government" in the Court of Claims. Is the claim or demand, on the part of the Reconstruction Finance Corporation in the form of a deficiency judgment which it elected to and did establish in its own name and right in the joint suit with the bank in the Alabama state court, a claim or demand on the part of the Government of the United States which the Government of the United States can set up as a counterclaim in the Court of Claims, on either the theory of counsel for the United States that the Reconstruction Finance Corporation is "a constituent part of the Government of the United States" or that of the court below that the Corporation is a "trustee for the Government" or "device for accomplishing the Government's purposes with the Government's money?"

This Court has, in a number of cases, considered the status and nature of the Reconstruction Finance Corporation as well as of other Government-owned corporations, and has consistently held that the Corporation partakes of the nature of a private corporation. The court below has, however, taken the position that the decisions of this Court have been confined to the mere question of the right of a Government-owned corporation to sue and be sued. Judge Madden states at page 17 of the record:

> The Supreme Court in those cases[6] was only deciding what Congress meant when it endowed Govern-

[6] Reconstruction Finance Corporation v. J. G. Menihan Corp., 312 U. S. 81, 61 S. Ct. 485, 85 L. Ed. 595; Federal Housing Administration v. Burr, 309 U. S. 242, 60 S. Ct. 488, 84 L. Ed. 724.

ment corporations with the capacity to sue and be sued. It held that Congress intended that they could be sued like private persons, and that sovereign immunity from suit was waived. But no court has decided that Congress shown any intention that the United States must pay out money to one who is indebted to it, through its agent and trustee, in a greater amount on a debt past due.

The court below did not squarely state nor decide the question before it, but mistakenly assumed that the Reconstruction Finance Corporation was acting as the mere agent of the United States. This assumption afforded the court below reason to cite and rely on its previous decision in Crane *et al.*, Receivers v. United States, 73 Ct. Cls. 677, certiorari denied 287 U. S. 601, 53 S. Ct. 7, 77 L. Ed. 523, rather than its decision in Dalton v. United States, 71 Ct. Cls. 421, in which that court held the Emergency Fleet Corporation to have been a private corporation and not a part of the Government of the United States. Among the decisions of this Court cited and followed in the Dalton case are Sloan Shipyards v. Emergency Fleet Corporation, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762; U. S. *ex rel.* Skinner and Eddy Corporation v. McCarl, 275 U. S. 1, 48 S. Ct. 12, 72 L. Ed. 133.

The Reconstruction Finance Corporation was not acting as a mere agent, neither on behalf of nor in the name of a principal, but in its own name and right as any private corporation, under the circumstances, would act and as the First National Bank of Florence did act. The Reconstruction Finance Corporation at all times acted as a body corporate, separate and distinct from the Government of the United States. The Reconstruction Finance Corporation and the national bank were joint complainants in the foreclosure proceedings that gave rise to the claims of each. Why should the claim of the Government-owned corpora-

tion differ in any manner from the claim of the Government-created corporation? Both corporations exist under acts of Congress, the one under a special act and the other under a general act.

The sole distinction between the bank and the Reconstruction Finance Corporation is that the United States owns the stock of the Reconstruction Finance Corporation. This Court has held that, in fixing its status or nature, it is immaterial who holds the stock of such a corporation as the Reconstruction Finance Corporation. In the performance of its objects and functions, the Reconstruction Finance Corporation does not differ from a national bank or other corporation created by or under an act of Congress or of a state legislature.

The Reconstruction Finance Corporation is defined in the act of its creation. The Corporation was created by the Reconstruction Finance Corporation Act of January 22, 1932, as:

> There is hereby created a body corporate with the name—Reconstruction Finance Corporation * * *.

The Reconstruction Finance Corporation being a body corporate, which can have but one meaning, an ordinary corporation, its claims and demands are its own and not claims or demands on the part of the Government of the United States.

When the Congress enacted the Reconstruction Finance Corporation Act, it was well aware of the fact that a body corporate is an ordinary corporation, private or municipal. The only difference between the Reconstruction Finance Corporation and any purely private corporation is that its stock is owned by the United States, which, of course, entitles the United States to name the officers and directors.

But this Court has held that it is immaterial who holds the stock or elect the directors and officers of the corporation. That being true, then how does the Reconstruction Finance Corporation differ from a national bank or other corporation created by or under an act of Congress? How does the Corporation differ from the First National Bank of Florence with which it participated in the loan and with which it joined in foreclosure proceedings in their joint names? If it is immaterial that the United States is the stockholder, the decision below is clearly erroneous. The decision below is based on the conclusion there reached that the funds of the Corporation are those of the United States. The only possible basis for such conclusion is that the United States is the holder of the stock of the Corporation. This Court stated the contra in Sloan Shipyards *et al.* v. Emergency Fleet Corporation and related cases, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762, in which Mr. Justice Holmes stated:

> The United States took all the stock but that did not affect the legal position of the company. United States v. Strang, 254 U. S. 491, 41 S. Ct. 165, 65 L. Ed. 368.

The petitioner submits that the decision of this Court in Sloan Shipyards is controlling here. The question of importance is, not who owns the stock; but the status, nature, rights and powers of the Reconstruction Finance Corporation as a body corporate separate and apart from the Government of the United States.

While this Court may not have decided the exact question here presented, and as applied to the Reconstruction Finance Corporation, it has held, in cases involving the legal rights and responsibilities of the Corporation, that the Reconstruction Finance Corporation is a corporate agency of the government of the United States, but while it acts as a Governmental agency in performing its func-

tions, its transactions are akin to those of a private enterprise, with the power "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal", and that in suing and being sued, the corporation is subject to the ordinary, natural and appropriate incidents of litigation as is a private party in similar circumstances.

The foregoing is from the opinion of Chief Justice Hughes in Reconstruction Finance Corporation v. J. G. Menihan Corp., 312 U. S. 81, 61 S. Ct. 485, 85 L. Ed. 595, which the Congress clearly approved and by which it was guided in enacting Section 13(b)(2) of the Contract Settlement Act of 1944. The Chief Justice cited Sloan Shipyards v. United States Fleet Corporation, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762; Keifer and Keifer v. Reconstruction Finance Corporation, 306 U. S. 381, 59 S. Ct. 516, 83 L. Ed. 784. In the Keifer and Keifer case,[7] Mr. Justice Frankfurter, after commenting, or refusing to comment, on the origin of governmental immunity, stated:

> But, because the doctrine gives the government a privileged position, it has been appropriately confined. Therefore, the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work.
>
> Congress may, of course, endow a governmental corporation with the government's immunity. But always the question is: has it done so?
>
> Because of the advantages enjoyed by the corporate device compared with conventional executive agencies, the exigencies of war and the enlarged scope of government in economic affairs have greatly extended the use of independent corporate facilities for governmental ends. In spawning these corporations during

[7] The district court held that the Reconstruction Finance Corporation could not be sued in a district court, but in the Court of Claims, since the United States was the real party in interest. 22 F. Supp. 918, aff'd. 97 F. 2d 812, reversed 306 U. S. 381, 59 S. Ct. 516, 83 L. Ed. 784.

> the past two decades, Congress has uniformly included amenability to law. Congress has provided for not less than forty of such corporations discharging governmental functions, and without exception the authority to sue-and-be-sued was included.

Of the Keifer and Keifer case, Mr. Justice Douglas stated in Brady v. Roosevelt Steamship Co., 317 U. S. 575, 63 S. Ct. 425, 87 L. Ed. 495:

> In that case the Fleet Corporation was held to be amenable to suit. And that policy has been followed. For when it comes to the utilization of corporate facilities in the broadening phases of federal activities in the commercial or business field, immunity from suit is not favored.

In J. G. Menihan Corporation, the Chief Justice, after referring to the Keifer and Keifer case, stated:

> It was with a similar approach that we decided in Federal Housing Administration v. Burr, 309 U. S. 242, 60 S. Ct. 488, 490, 84 L. Ed. 724, that the Federal Housing Administration was subject to be garnished under state (Michigan) law for moneys due to an employee.

The court below distinguished this case from Reconstruction Finance Corporation v. J. G. Menihan Corp., 312 U. S. 81, 61 S. Ct. 485, 85 L. Ed. 595, and Federal Housing Administration v. Burr, 309 U. S. 242, 60 S. Ct. 488, 84 L. Ed. 724, stating that this Court, in those cases, had before it merely the question of the waiver of Governmental immunity in suits by Government-owned corporations. No other decisions of this Court were cited or referred to in the opinion below. No consideration was given to Sloan Shipyards v. Emergency Fleet Corporation, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762; U. S. *ex rel.* Skinner and Eddy Corp. v. McCarl, 275 U. S. 1, 48 S. Ct. 12, 72 L. Ed. 131; Keifer and Keifer v. Reconstruction Finance Cor-

poration, 306 U. S. 381, 59 S. Ct. 516, 83 L. Ed. 784, in which the decisions of this Court are in point.

Two other cases were considered with the Sloan Shipyards case, 272 Fed. 132. They are Astoria Marine Iron Works v. Emergency Fleet Corporation, 270 Fed. 386, and Emergency Fleet Corporation v. Wood, 274 Fed. 893.

In Astoria Marine Iron Works v. Emergency Fleet Corporation, the iron works sued the United States Shipping Board Emergency Fleet Corporation for breach of contract and the District Court for the District of Oregon ordered, on demurrer, that the suit be dismissed because the Court held that the suit was for a claim against the United States and in excess of $10,000.00 and further held that it should have been brought in the Court of Claims. District Judge Wolverton, in language quite similar to that of the court below, stated:

> I am impelled to the conclusion that the Fleet Corporation is a governmental entity, created to exercise governmental functions within its restricted limitations, and that for its acts performed in that capacity the United States is not suable, except in the Court of Claims, involving an amount in excess of $10,000. Sloan Shipyards Corp. v. U. S. Shipping Board (D.C.), 268 Fed. 624.
>
> Neither United States v. Strang *et al.*, 254 U. S. . . .; 41 Sup. Ct. 165, 65 L. Ed. . . . ; nor Salas v. United States, 234 Fed. 842, 148 C. C. A. 440, is opposed to this view. The former case must be read in view of Section 41 of the Criminal Code (Comp. St. Section 10205); the court holding that the defendants were not agents of the United States within the true intendment of that section.

This Court reversed the district court and held that the suit was properly brought in the district court rather than in the Court of Claims. In Sloan Shipyards Corporation v. Emergency Fleet Corporation, suit was instituted in a

district court against the Fleet Corporation on a claim in excess of $10,000.00 and the district court held that it should have been brought in the Court of Claims as a claim against the United States, following Astoria Iron Works.

In U. S. Shipping Board Emergency Fleet Corporation v. Wood, the Emergency Fleet Corporation entered into a contract with the Eastern Shore Shipbuilding Corporation for the construction of harbor tugs. The shipbuilding company was declared bankrupt. The Emergency Fleet Corporation filed a claim in the amount of $328,017.72 and claimed priority, which the bankruptcy court disallowed on the ground that the debt represented thereby was not a debt due to the United States. On appeal to the Second Circuit the order of the district court was affirmed.

When these three cases came before this Court, the status and nature of the two claims against a Government-owned corporation and the one claim by it against the bankrupt were squarely presented for determination. The question was, were these claims against or by the Government of the United States? The exact question presented here.

In the Astoria Marine Iron Works and Sloan Shipyards Corporation cases, this Court held that a claim against the Emergency Fleet Corporation was not a claim against the Government of the United States, and in the Wood case, exactly as here, that a claim on behalf of the Emergency Fleet Corporation is not a debt "due to the United States."[8]

A claim of the Reconstruction Finance Corporation against a fund deposited by a state banking commissioner for the benefit of those who had made deposits for savings

[8] Priority under Section 3466 of the Revised Statutes, Act of March 2, 1799, 1 Stat. 676, 31 U. S. C. 191, was denied.

bank equipment, and for those creditors who had filed no claim, was not entitled to priority and preference as a claim on a "debt due the United States", though the Corporation is a federal corporation and an agency of the United States Government. So held in Reconstruction Finance Corporation v. Brady, Tex. Civ. App. 1941, 150 S. W. 2d 357.

The petitioner submits that the questions here presented with respect to the Reconstruction Finance Corporation are the same as those presented in Sloan Shipyards Corporation *et al.* v. Emergency Fleet Corporation and related cases, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762, with respect to the Emergency Fleet Corporation. Mr. Justice Holmes stated the questions presented as:

> These cases present in different ways the question of the standing of the United States Shipping Board Emergency Fleet Corporation in the Courts—the first two, whether it so far embodies the United States that these suits should have been brought in the Court of Claims; the third whether it is entitled to a preference against a bankrupt which it is asserted would belong to the United States if the United States claimed in its own name.

This Court held that the Fleet Corporation was formed like any business corporation with capacity to sue and be sued, as such its contracts were enforcible by ordinary action (not in the Court of Claims) and the Emergency Fleet Corporation stood on the footing of an ordinary creditor in bankruptcy proceedings against a corporation with which it had contracted. In the course of his opinion Mr. Justice Holmes stated:

> The Shipping Act contemplated a corporation in which private persons might be stockholders and which was to be formed like any business corporation under the laws of the District, with capacity to sue and be sued. The United States took all the stock but that did not affect the legal position of the com-

pany. United States v. Strang, 254 U. S. 491, 41 S. Ct. 165, 65 L. Ed. 368.

In U. S. *ex rel.* Skinner and Eddy Corporation v. McCarl, 275 U. S. 1, 48 S. Ct. 12, 72 L. Ed. 131, the relator had entered into contracts with the Emergency Fleet Corporation. The relator filed its petition in the then Supreme Court of the District of Columbia, seeking a writ of mandamus to compel the Comptroller General to pass on its claims arising out of the contracts. The Comptroller General declined to consider the claims, asserting that he had neither duty nor power to do so and that the duty to pass on the claims rested with the Shipping Board. The Comptroller there took an exactly opposite position from that taken by his successors in this case. In that case the Supreme Court of the District sustained the demurrer and dismissed the petition without opinion. Its judgment was affirmed by the Court of Appeals of the District, 56 App. D. C. 52, 8 F. 2d 1011. This Court granted a writ of certiorari. The Government insisted that the petition was properly dismissed because claims arising out of contracts with the Fleet Corporation were not within the jurisdiction of the Comptroller General. This Court so held. In his opinion, Mr. Justice Brandeis referred to the Food Administration Grain Corporation and other enumerated corporations as "Government-owned private corporations" and stated:

> Being a private corporation, the Fleet Corporation may be sued in the state or federal courts like other private corporations: * * *.

The Skinner and Eddy and Sloan Shipyards cases involving as they did the same question presented here, should be controlling.

In Inland Waterways Corporation v. Young, 309 U. S. 517, 60 S. Ct. 646, ... L. Ed. ...., the question before this Court, as stated by Mr. Justice Frankfurter, was:

> The question before us is whether a national bank may pledge assets to secure deposits of funds made by governmental agencies, even though they may not be "public money" within the scope of Paragraph 45 of the National Banking Act.

In the course of his opinion, Mr. Justice Frankfurter stated:

> The motives which lead Government to clothe its activities in corporate form are entirely unrelated to the problem of safeguarding governmental deposits, and therefore irrelevant to the issue of *ultra vires*. Compare Skinner & Eddy Corp. v. McCarl, 275 U. S. 1, 8, 48 S. Ct. 12, 14, 72 L. Ed. 131. The true nature of these modern devices for carrying out governmental functions is recognized in other legal relations when realities become decisive. Compare Clallam County v. United States, 263 U. S. 341, 44 S. Ct. 121, 68 L. Ed. 328; Emergency Fleet Corp. v. Western Union, 275 U. S. 415, 48 S. Ct. 198, 72 L. Ed. 345. The funds of these corporations are, for all practical purposes, Government funds; the losses, if losses there be, are the Government's losses. Compare United States Grain Corp. v. Phillips, 261 U. S. 106, 113, 43 S. Ct. 283, 285, 67 L. Ed. 552.

The Inland Waterways Corporation case was not cited by the court below, but was relied on by counsel for the respondent and will of course be relied on in their brief here for authority that the funds of the Reconstruction Finance Corporation are in fact the funds of the United States.

The plaintiff submits that the funds of the corporation are its own. The interest of the United States in the Reconstruction Finance Corporation is merely that of a stockholder. The body corporate is the owner of its funds until liquidation.

But is the mere fact that the losses of the Reconstruction Finance Corporation ultimately may be the losses of the

United States decisive here? We are here concerned with the right to sue and be sued and the right to off-set, in the Court of Claims, the claim of the body corporate against a claim against the United States. The one thing that the Congress has most clearly stated is that the body corporate shall have power "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal". Section 4 of the Reconstruction Finance Corporation Act. 47 Stat. 6, 15 U. S. C. 604. If the Corporation may sue, the United States may not. The corporation is the proper party. The United States, not having the right to sue, does not have the right to counterclaim.

The Congress having created the Reconstruction Finance Corporation and having clothed it with the exclusive right to sue and be sued, certainly did not mean that the United States could step in and sue or counterclaim on behalf of the Corporation or in its stead. This has recently been considered by the Congress in the Contract Settlement Act of 1944.

While in Section 3 of the Contract Settlement Act, the Corporation is made a contracting agency, in Section 13 of the act, the Congress clearly recognized the distinction between a suit against the United States in the Court of Claims or in a district court for an amount less than $10,000.00 and a suit against the Reconstruction Finance Corporation. The Congress expressly provided "the suit shall be brought against such corporation in any court of competent jurisdiction in accordance with existing law." The Corporation can not be sued in the Court of Claims. Thus has the Congress restated and interpreted the existing law and followed the conclusions of this Court in Reconstruction Finance Corporation v. J. G. Menihan Corp., 312 U. S. 81, 61 S. Ct. 485, 85 L. Ed. 595, that, while, the

Corporation is a governmental agency, it is to sue and to be sued as a private corporation.

POINT II.

The Court of Claims did not have jurisdiction to enter judgment in favor of the Reconstruction Finance Corporation.

The Reconstruction Finance Corporation can neither sue nor be sued in the Court of Claims. The Congress has provided and this Court has held that the Corporation may sue as any private corporation in any court, Federal or State, except in the Court of Claims.

The Court of Claims clearly exceeded its jurisdiction in entering judgment in favor of the Corporation in the amount of $3,104.87, which the court in fact did. While the Court of Claims may enter judgment in favor of a party before it, it has no authority to enter judgment for the Reconstruction Finance Corporation which, by act of Congress, may not sue or be a party to a suit in such court.

Conclusion.

The petitioner submits that the amount of the mortgage deficiency set up in the counterclaim is not a debt due the United States or a department or establishment thereof, the recovery of which can be superintended by the Comptroller General and which can be applied as an offset against the indebtedness of the United States to the petitioner. The Reconstruction Finance Corporation is not a department or establishment of the United States Government, but a body corporate, subject to the ordinary incidents of litigation, as was the Emergency Fleet Corpora-

tion under the decisions of this Court in Sloan Shipyards Corporation v. Emergency Fleet Corporation, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762; and U. S. *ex rel.* Skinner and Eddy Corporation v. Emergency Fleet Corporation, 275 U. S. 1, 48 S. Ct. 12, 72 L. Ed. 133.

The Corporation is a body corporate, as the act of its creation provides, vested with the rights and liabilities of a private corporation to conduct its affairs and collect debts owed to it in its own name and suit. In order to be a body corporate it must necessarily be an entity separate and distinct from the Government of the United States. The Congress clearly intended so to provide in the Reconstruction Finance Corporation Act and in the Contract Settlement Act of 1944. In the latter act the Congress adopted the principles stated by this Court in Reconstruction Finance Corporation v. J. G. Menihan Corporation, 312 U. S. 81, 61 S. Ct. 485, 85 L. Ed. 595, and related cases.

Respectfully submitted,

THEODORE B. BENSON,
Counsel for Petitioner.

No. 187

In the Supreme Court of the United States

OCTOBER TERM, 1945

CHERRY COTTON MILLS, INC., PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

INDEX

CITATIONS

666063—45

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OPINION BELOW

The opinion of the Court of Claims (R. 15–18) is not yet reported.

JURISDICTION

The judgment of the Court of Claims was entered on April 2, 1945 (R. 20–21). The petition for a writ of certiorari was filed on July 2, 1945. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether, in a suit brought by petitioner against the United States in the Court of Claims on a tax refund claim, the Government may assert a counterclaim based on petitioner's indebtedness to the Reconstruction Finance Corporation.

STATUTE INVOLVED

Section 145 of the Judicial Code, 28 U. S. C. 250 (2), provides, *inter alia:*

> The Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> * * * * *
>
> Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: * * *

STATEMENT

In 1936, the Reconstruction Finance Corporation ("R. F. C.") participated with an Alabama national bank in a loan of $110,000 to petitioner, an Alabama corporation, the loan being evidenced by petitioner's note and secured by a mortgage on its property (R. 10–12).[1] Petitioner defaulted

[1] Petitioner applied to the bank for the loan in October, 1935, with the understanding that the bank would request the R. F. C. to purchase a participation therein (R. 10). The note for $110,000 with interest, and the mortgage which

in repaying the loan, the mortgage was duly foreclosed on July 12, 1939, and the R. F. C. and the bank were left with a deficiency claim against petitioner amounting to $5,963.51 due to the R. F. C. and $2,981.74 due to the bank (R. 12–13).[2]

In February 1942, the Commissioner of Internal Revenue allowed a claim filed by petitioner for a refund of processing and floor stock taxes paid by it under the Agricultural Adjustment Act, in the amount of $3,104.87, and petitioner was advised that, unless it was indebted to the United States Government, a check for such refund would issue to it (R. 13). On August 11, 1942, the General Accounting Office issued a Certificate of Settlement in connection with the tax refund claim, directing that a check for $3,104.87 in settlement of the claim be issued to the R. F. C. to liquidate partially the indebtedness of petitioner

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secured it, were executed by petitioner to the bank in January 1936 (R. 10). In February, 1936, pursuant to a Participation Agreement between the R. F. C. and the bank, the R. F. C. acquired a ⅔ interest in the note, leaving a ⅓ interest in the bank which transferred the note and mortgage to the R. F. C. "for value received" (R. 11–12). The bank advanced the $110,000 to petitioner in installments ending in August 1936 (R. 12).

[2] On default by petitioner, the R. F. C. instituted foreclosure proceedings in the joint names of itself and the bank on July 12, 1939, when a total of $108,194.06 was due on the note. The R. F. C. and the bank jointly purchased the property at the foreclosure sale for $100,000, leaving a total deficiency (including expenses of sale) of $8,945.25, of which ⅔ or $5,963.51 was due to the R. F. C. (R. 12–13).

to the R. F. C. in the amount of $5,963.51 plus interest from July 12, 1939 (R. 2, 13–14). Apparently in ignorance of this Certificate of Settlement, the Treasurer of the United States issued a check on August 17, 1942, in the amount of the refund, payable to petitioner (R. 13), but on August 26, 1942 that check was stopped and recalled from petitioner by a telegram from the Chief Disbursing Officer of the Treasury, informing petitioner that the check should have been drawn to the R. F. C. to liquidate partially petitioner's indebtedness to the R. F. C. (R. 13–14). After petitioner returned that check to the Treasury Department a reissued check in the same amount was drawn to the order of the R. F. C. and was transmitted to it by the Treasurer of the United States in accordance with the instructions in the Certificate of Settlement (R. 13–14). On September 2, 1942, the R. F. C. allowed petitioner a credit or deduction in the amount of the check, on petitioner's indebtedness to the R. F. C. (R. 14).

On June 12, 1943, petitioner instituted this suit in the Court of Claims to recover the tax refund "without credit or set-off" on account of its indebtedness to the R. F. C. (R. 1–2); and the Government filed an answer and counterclaim for the amount due to the R. F. C. after applying the tax refund check (R. 3–8). After finding the facts as set forth above, the court below dismissed peti-

tioner's suit and rendered judgment in favor of the United States on the counterclaim, in a stipulated amount of $4,165.73 (R. 19, 20–21).[3]

ARGUMENT

Petitioner unsuccessfully contended below, and now urges in its application for certiorari, that it should be permitted to recover judgment against the United States for the tax refund, but that the Government should be denied the right to counterclaim in the same suit for a debt admittedly owed by petitioner to a corporate agency of the Government (Pet. 2, 4–6, 7–8). We submit that the rejection of this contention by the court below was right, in view of Section 145 of the Judicial Code, *supra*, p. 2, vesting jurisdiction in the Court of Claims over "counterclaims * * * on the part of the Government", and that review by this court is not warranted.

Contrary to petitioner's assertion, the issue herein is not "one of first impression" (Pet. 7). This Court has declined to review two prior decisions of the court below dealing with the same question, in each of which the Court of Claims permitted a counterclaim to be asserted by the United States on account of a debt due to a government corporation—the United States Shipping Board Emergency Fleet Corporation. *Crane et al.,*

[3] In its petition to this Court, petitioner incorrectly states that the court below gave judgment in favor of the R. F. C. (Pet. 2, 4, 8).

Receivers v. *United States*, 73 C. Cls. 677, certiorari denied, 287 U. S. 601; *Ship Construction Company, Inc.* v. *United States*, 91 C. Cls. 419, certiorari denied, 312 U. S. 699.[4]

Any other result would be contrary to elementary principles of agency. The R. F. C. is a "federal instrumentality" and an agency of the United States. *Maricopa County* v. *Valley National Bank of Phoenix*, 318 U. S. 357, 362; *Langer* v. *United States*, 76 F. 2d 817, 819, 822–823 (C. C. A. 8).[5] Whether the corporation acts in its own name or as agent for the United States, its agency relationship to the government is as a matter of law deemed to be a part of all its transactions. *Russell Co.* v. *United States*, 261 U. S. 514; *Ship Construction Co.* v. *United States*, 91 C. Cls. 419, certiorari denied, 312 U. S. 699. Hence, the claim of the corporate agent is in law that of the United States (*United States Grain Corporation* v. *Phillips*, 261 U. S. 106; *Inland*

[4] Compare *Defense Supplies Corporation* v. *United States Lines Co.*, 148 F. 2d 311 (C. C. A. 2d), pending on petition for certiorari, No. 222, present Term, in which a government corporation one step further removed from its principal (i. e., a corporate subsidiary of the R. F. C.) was held sufficiently identified with the Government to preclude a suit in the Corporation's name brought against the United States by an insurance company as subrogee.

[5] All of the capital stock of the R. F. C. is owned by the United States and management of the corporation is vested in a Board of Directors appointed by the President and confirmed by the Senate. (R. 10; Act of January 22, 1932, secs. 2 and 3, 47 Stat. 5, 15 U. S. C. 602–603.)

Waterways Corp. v. *Young*, 309 U. S. 517; *Clallam County* v. *United States*, 263 U. S. 341), enforceable by the United States in its own name and right as the "real party in interest." *Erickson* v. *United States*, 264 U. S. 246 (suit by United States to enforce contract rights of United States Spruce Corporation).[6] It follows that, in lieu of suing affirmatively on the claim as plaintiff under Section 24 (1) of the Judicial Code (28 U. S. C. 41 (1)), the United States may enforce it by way of counterclaim under Section 145, as it could a claim originating in a noncorporate department of the Government. *Crane* v. *United States, supra; Ship Construction Co., Inc.* v. *United States, supra.*

The power of the R. F. C. to enforce the claim against petitioner in an independent suit in its own name, the result of its power to "sue and be sued," is no different from the right of a private

[6] See also *United States* v. *Skinner & Eddy Corp.*, 35 F. 2d 889 (C. C. A. 9); *United States* v. *Czarnikow-Rionda Co.*, 40 F. 2d 214 (C. C. A. 2); *North Dakota-Montana Wheat Growers' Assn.* v. *United States*, 66 F. 2d 573 (C. C. A. 8), certiorari denied, 291 U. S. 672; *United States* v. *New Amsterdam Casualty Co.*, 55 F. 2d 377 (S. D. N. Y.). The right of the United States to sue in its own name as the "real party in interest" in connection with R. F. C. transactions has been specifically upheld by several district courts. *United States* v. *Arthur*, 23 F. Supp. 537 (S. D. N. Y.); *United States* v. *Freeman*, 21 F. Supp. 593 (D. Mass.); *Reconstruction Finance Corporation* v. *Graydon*, 16 F. Supp. 765 (E. D. S. C.); *Reconstruction Finance Corporation* v. *Krauss*, 12 F. Supp. 44 (D. N. J.).

agent, in certain circumstances, to assert the principal's claim, but this does not prevent a judgment in favor of the principal from being a valid acquittance to the debtor of any claim on the part of the agent. Restatement of Agency, Sec. 368; Williston, *Contracts* (rev. ed., 1936), Sec. 293; Mechem, *Agency* (1914 ed.), Sec. 2045.[7]

The only alternative to the applicability of Section 145 of the Judicial Code to the instant counterclaim is the maintenance of two separate suits to accomplish precisely what was achieved below in one. Such multiplicity and circuity of action is the very result which the counterclaim provision was designed to avoid. Cf. *Barry* v. *United States*, 229 U. S. 47, 53.[8]

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[7] Decisions dealing with the "sue and be sued" capacity of the R. F. C. are not pertinent here, as the court below rightly observed, since nothing in those decisions or in the statutes creating the R. F. C. indicates that Congress intended, by utilizing the corporate form, to require "that the United States must pay out money to one who is indebted to it, through its agent and trustee, in a greater amount on a debt past due" (R. 17).

[8] Whether the Comptroller General, who first asserted the right of set-off in this case, was authorized by statute to do so, is no concern of petitioner's, as the court below properly observed, since "it was the duty of someone * * * to see that this set-off was made" (R. 17). *Crane* v. *United States*, *supra*; *Ship Construction Co., Inc.* v. *United States*, *supra*; cf. *Skinner & Eddy Corp.* v. *McCarl*, 275 U. S. 1. In any event, the Comptroller General acted within his powers in making the set-off here in question. See Sections 304 and 305 of the Budget and Accounting Act of 1921, 42 Stat. 24; *Barry* v. *United States*, 229 U. S. 47, 53.

CONCLUSION

The decision below is clearly correct, and there is no conflict of decisions. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1945

No. 187

In the Supreme Court of the United States

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BRIEF FOR THE UNITED STATES

INDEX

CITATIONS

Cases—Continued. Page

Statutes—Continued. Page

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 187

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ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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OPINION BELOW

The opinion of the Court of Claims (R. 15–18) is reported in 59 F. Supp. 122.

JURISDICTION

The judgment of the Court of Claims was entered on April 2, 1945 (R. 20–21). The petition for a writ of certiorari was filed on July 2, 1945, and was granted October 15, 1945 (R. 21). The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether, in a suit brought by petitioner against the United States in the Court of Claims to recover a tax refund, the Court has jurisdiction, under Section 145 (2) of the Judicial Code, to hear and determine a counterclaim based upon petitioner's indebtedness to the Reconstruction Finance Corporation.

STATUTES INVOLVED

The pertinent parts of the statutes involved are set forth in the Appendix A, *infra*, pp. 40–46.

STATEMENT

In 1936, the Reconstruction Finance Corporation (hereinafter referred to as R. F. C.) participated with an Alabama national bank in a loan of $110,000 to petitioner, an Alabama corporation, the loan being evidenced by petitioner's note and secured by a mortgage on its property (R. 10–12).[1] Petitioner defaulted in repaying

[1] Petitioner had applied for the loan in October 1935, and the bank agreed to lend up to $110,000 on petitioner's note secured by collateral, with the understanding that the R. F. C. would be asked to purchase a participation therein (R. 10). The note for $110,000 with interest, and the mortgage which secured it, were executed by petitioner to the bank in January 1936 (R. 10). In February 1936, the R. F. C. entered into a participation Agreement with the bank, at the latter's request, whereby the R. F. C. acquired a two-thirds interest in the note, leaving a one-third interest in the bank (R. 11). After the bank transferred the note and mortgage to the R. F. C. "for values received," the latter executed a

the loan, the mortgage was duly foreclosed on July 12, 1939, and the R. F. C. and the bank were left with a deficiency claim against petitioner amounting to $5,963.51 due to the R. F. C. and $2,981.74 due to the bank (R. 12–13).[2]

In February 1942, the Commissioner of Internal Revenue allowed in the amount of $3,104.87, a claim filed by petitioner for a refund of processing and floor stock taxes paid by it under the Agricultural Adjustment Act (R. 13). Petitioner was advised by the Acting Commissioner that unless it was indebted to the United States Government, a check for such refund would issue to it (R. 13). On August 11, 1942, the General Accounting Office issued a Certificate of Settlement certifying that $3,104.87 was due to petitioner from the United States "on account of refund of processing and floor stock taxes," and directing that a check in this amount "issue in favor of" the R. F. C. "to partially liquidate an in-

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Certificate of Interest reciting their respective interests in the loan (R. 11–12). The bank advanced the $110,000 to petitioner in installments ending in August 1936 (R. 12).

[2] On default by petitioner, the R. F. C. instituted foreclosure proceedings in the joint names of itself and the bank on July 12, 1939, when a total of $108,194.06 was due on the note (R. 12). The R. F. C. and the bank jointly purchased the property at the foreclosure sale for $100,000, leaving a total deficiency (including expenses of sale) of $8,945.25, of which ⅔ or $5,963.51 was due to the R. F. C. (R. 12–13). The Court of Claims found that "since July 12, 1939," petitioner "has been indebted to the R. F. C." in this amount "plus interest at 5 percent per annum" from that date (R. 13). Contrary to petitioner's statement (Pet. Br. 16), the R. F. C. did not obtain a deficiency judgment for this amount.

debtedness" of petitioner to the R. F. C. "in the amount of $5,963.51 plus interest of 5% from July 12, 1939" (R. 1–2, 13–14).

Apparently in ignorance of the directions in this Certificate of Settlement, the Treasurer of the United States on or about August 17, 1942, issued a check payable to petitioner in the amount of the tax refund (R. 13). However, on August 26, 1942, that check was stopped and recalled from petitioner by a telegram from the Chief Disbursing Officer of the Treasury Department, informing petitioner that the check should have been drawn to the R. F. C. to liquidate partially petitioner's indebtedness to the R. F. C. (R. 13). Petitioner returned that check to the Treasury Department, and a reissued check in the same amount was drawn to the order of the R. F. C. and was transmitted to it by the Treasurer of the United States in accordance with the instructions in the Certificate of Settlement (R. 13–14). On September 2, 1942, the R. F. C. allowed petitioner a credit or deduction in the amount of the check, on petitioner's indebtedness to the R. F. C. (R. 14).

On June 12, 1943, petitioner instituted this suit in the Court of Claims to recover the tax refund "without credit or set-off" on account of its indebtedness to the R. F. C. (R. 1–3). The Government filed an answer denying indebtedness to petitioner (R. 3–4), and a counterclaim for the

amount remaining due to the R. F. C. after applying the tax refund check (R. 4–8). After finding the facts as set forth above (R. 9–14), the Court of Claims dismissed petitioner's suit and rendered judgment in favor of the United States on the counterclaim,[3] in a stipulated amount of $4,165.73 (R. 19, 20–21).[4]

SUMMARY OF ARGUMENT

I

The debt due from petitioner to the R. F. C. is a demand on the part of the United States within the meaning of Section 145 (2) of the Judicial Code, 28 U. S. C. 250 (2), because that corporation is an agency of the United States. R. F. C. is wholly owned by the Government, its functions are governmental, and the Government guarantees the corporation's obligations.

Section 145 (2) contains the sweeping language "all * * * demands whatsoever", and is amply broad to cover all claims of the United

[3] In both its petition for certiorari and its brief herein, petitioner incorrectly states that the court below gave judgment in favor of the R. F. C. (Pet. 2, 4, 8; Pet. Br. 8, 28).

[4] This total comprises the balance of $2,858.64 due to the R. F. C. from petitioner after applying the tax refund check; plus $937.82 representing interest at 5% on the original deficiency of $5,963.51 from its due date (July 12, 1939) to the date on which the tax refund was applied in reduction (September 2, 1942); plus $369.27 representing interest at 5% on the reduced deficiency from September 2, 1942 to the date of judgment (R. 19).

States whether they originate in corporate or noncorporate agencies. The legislative history of the section strongly supports the construction placed upon it by the court below.

II

The power enjoyed by the R. F. C. to carry on litigation in its own name does not deprive it of its status as an agency of the United States, and it does not deprive the United States of its right to sue in its own name on the claims of its corporate agencies. The courts have uniformly held that the United States may sue in its own name on the claims of its corporate agencies where its interests are involved, despite the fact that the corporations are authorized to carry on litigation in their own names. A detailed examination of the structure and functions of the R. F. C. reveals no justification for abridging this right and power of the United States or for denying the jurisdiction of the court below over the counterclaim here in issue.

III

There is nothing in the Budget and Accounting Act of 1921 to prohibit the Comptroller General from setting off an audited claim of the R. F. C. against petitioner's tax refund claim. It is the duty of Government accounting officers, without regard to statutes, to protect the interests of the United States by withholding payments when they

have actual knowledge that the claimant owes the United States on another transaction.

Moreover, the jurisdiction of the Court of Claims over Government set-offs and counterclaims is independent of Government accounting statutes. And it would have been the duty of the Court of Claims to take cognizance of petitioner's indebtedness to the R. F. C. where that indebtedness, as here, was revealed by petitioner's complaint, regardless of whether the Government attorneys had actually set up the counterclaim in the Government's pleadings.

ARGUMENT

Petitioner was engaged in two separate transactions with agencies of the United States at approximately the same time. One transaction, an overpayment of taxes to the Bureau of Internal Revenue, a noncorporate agency, resulted in a conceded indebtedness of about $3,000 from the United States to petitioner. The other transaction, a loan obtained in part from the R. F. C., a corporate agency wholly owned by the United States, resulted in an uncontroverted indebtedness of about $7,000 (including interest) from petitioner to the R. F. C. and ultimately to the United States. Petitioner contends that it is entitled to recover a judgment in the Court of Claims against the United States for the $3,000, but that the United States may not, in the same suit, set off the $3,000 debt against its $7,000 claim and recover

a judgment for the remaining $4,000. In effect, the petitioner claims that it is entitled, in this suit, to collect $3,000 from the United States, but that the United States must resort to a separate suit in another tribunal in order to collect its $7,000 claim, and thus run the attendant risk that the $3,000 will have been dissipated and the separate judgment for $7,000 rendered wholly uncollectible. In short, petitioner takes the startling position that the United States must now hand over to it the $3,000, despite the obvious fact that heretofore the United States has been unable to collect from petitioner its uncontroverted $7,000 claim. According to petitioner, the jurisdiction of the Court of Claims, under Section 145 (2) of the Judicial Code, to hear and determine "all set-offs, counterclaims * * *, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court," is prevented from operating because the obligation to the United States arose out of a transaction with a corporate agency capable of suing in its own name.

We submit that this contention was rightly rejected below; and that the Congressional desire expressed more than 80 years ago in the counterclaim statute, to avoid multiplicity of suits and to "facilitate the administration of justice" between the Government and its citizens, was not intended

to be rendered ineffective whenever the Government utilized a corporate agency to carry out its functions.

I

Petitioner's Debt to the R. F. C. Is a Demand on the Part of the Government of the United States.

Section 145 (2) of the Judicial Code, 28 U. S. C. 250 (2), provides, *inter alia*:

> The Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> * * * * *
>
> Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: * * *

If petitioner's indebtedness to the R. F. C. falls within the category of "demands * * * on the part of the Government of the United States," as this phrase is used in Section 145 (2) of the Judicial Code, the Court of Claims plainly acted within its jurisdiction in adjudicating the counterclaim. We shall show that the action of the court below in holding the R. F. C. claim to be within the purview of the section, is fully justified by both the broad language of the section and the

Congressional objective reflected in the history of its enactment.

THE COUNTERCLAIM PROVISION IS SUFFICIENTLY BROAD TO INCLUDE CLAIMS OF CORPORATIONS WHOLLY OWNED BY THE UNITED STATES

The counterclaim provision gives the Court of Claims jurisdiction over "*all* set-offs, counterclaims, claims for damages * * * or other demands *whatsoever* on the part of the Government of the United States against any claimant against the Government in said court." [Italics supplied.] Petitioner's contention is that this means not *all* counterclaims or demands *whatsoever*, but only those originating in transactions with noncorporate agencies of the Government. "Across the petitioner's path there * * * lies the stumbling block of that uncompromising 'all'." See *Baltimore National Bank* v. *Tax Commission*, 297 U. S. 209, 215. And here that obstacle is made even more difficult to hurdle by the addition of "whatsoever." In fact, the counterclaim provision has been characterized by this Court as "* * * broad enough to authorize the Court of Claims, in suits against the United States, to hear and determine demands of the government of every kind against the claimant, or those whom the claimant represents * * *." *Allen* v. *United States*, 17 Wall. 207, 210. In the cited case, the demand in question did not even relate to a corporate agency of the Government handling funds actually owned

by the Government, but had to do with securities held in trust for Indians; yet the statute was held applicable.

The scope of the counterclaim provision must be considered in the light of the truism that the Government of the United States functions solely through its agents and agencies. Hence, claims against it or in its favor can arise only through their functioning. The R. F. C. is a Government agency (*R. F. C.* v. *Menihan Corp.*, 312 U. S. 81, 83) none the less because it was created by Congress in corporate form to facilitate the achievement of its purposes. Cf. *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 523. Petitioner's statement that the R. F. C., in the transaction here involved, was "acting in its own name and right as any private corporation" (Pet. Br. 17) is disproved by the well-established proposition that every activity of a government-owned corporation like the R. F. C. is necessarily governmental and not private. *Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95, 102; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 32; *Graves* v. *N. Y. ex rel. O'Keefe*, 306 U. S. 466, 477.[5] The fallacy in

[5] A clear distinction exists between corporate agencies, such at the R. F. C., owned and controlled by the United States and engaged in the performance of governmental functions, and instrumentalities such as national banks, in which there are private interests and purposes. The latter are "* * * not departments of the Government. They are private corporations in which the Government has an interest." *Emergency Fleet Corp.* v. *Western Union*, 275 U. S. 415, 425–426; *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 522.

petitioner's argument is further emphasized by the fact that the obligations of the R. F. C. are fully and unconditionally guaranteed by its sole stockholder, the United States (R. F. C. Act, Sec. 9, as amended; 15 U. S. C. 609), a feature that marks graphically the fundamental difference between the relationship of the Government to the R. F. C. and the relationship of a stockholder to a private corporation. Moreover, as will be shown herein (*infra*, pp. 17–23), the demands of or against a Government-owned corporation may be litigated by or against the United States. And clearly the phrase "Government of the United States," as used in the counterclaim statute, is interchangeable with the phrase "United States". This appears from the fact that "claims against the United States," upon which suit may be brought in the Court of Claims, includes "all claims * * * upon any contract * * * with the Government of the United States" (28 U. S. C. 250 (1)). It also appears from the fact that the counterclaim provision itself, covering demands "on the part of the *Government* of the United States," identifies the plaintiff in the suit as "any claimant against the Government in said court" (28 U. S. C. 250 (2)).

There is plainly no room in the statute for a distinction between corporate and noncorporate agencies owned by the Government.

THE LEGISLATIVE HISTORY OF THE COUNTERCLAIM SECTION SUPPORTS THE CONSTRUCTION PLACED ON THAT SECTION BY THE COURT BELOW

Nothing in the history of Section 145 (2) of the Judicial Code reveals an intention on the part of the Congress to limit its applicability to demands arising from the functions of those agencies in existence at the date of its enactment. Nor does that history show a Congressional purpose to exclude from the purview of the section such new governmental devices, including Government corporations, as might be evoked by changing needs. Rather, the objectives of the statute require its application to any agency of the United States, to the extent that a demand in its favor arose in the course of its functioning as a Federal agency.

The counterclaim statute originated, almost in *haec verba*, in the Act of March 3, 1863, which imparted to the judgments of the Court of Claims the finality that had been withheld in the original Court of Claims Act of February 24, 1855 (c. 122, 10 Stat. 612), thus converting it from an "administrative or advisory body" into a court. *Williams* v. *United States*, 289 U. S. 553, 565; see also *United States* v. *Jones*, 119 U. S. 477, 477–479. In Section 3 of the 1863 Act, Congress also granted the Court of Claims jurisdiction over "all set-offs, counter-claims, claims for damages,

whether liquidated or unliquidated, or other demands whatsoever, on the part of the Government against any person making claim against the Government in said court * * * (c. 92, 12 Stat. 765.)[6]

Reporting the bill[7] which become the Act of March 3, 1863, the House Judiciary Committee stated that the set-off and counterclaim provision was "founded upon the policy of avoiding multiplicity of suits, and furnishing an additional safeguard against fraudulent or exorbitant demands against the government in cases where the claims are mutual." (H. Rept. 34, 37th Cong., 2d Sess., p. 3.) The counterclaim provision was attacked upon the floor of the House on the ground that a claimant thereby lost privileges which he might invoke if the United States brought an independent suit against him, such as the right to a jury trial (58 Cong. Globe 1674). But its sponsors, strongly defending that provision as the "beauty of the bill", replied that if a citizen "prefers his claim" against the United States under the jurisdiction conferred by bill,

> It is a matter of his own election. The bill does not compel him to do so; he need not do it. If there be counter-claims between

[6] The portion of the section here in issue was cast in its present form by Rev. Stat. § 1059 which added the phrase "of the United States" after the phrase "on the part of the Government." There is no evidence that any change of substance was intended by such addition.

[7] H. R. 226, 37th Cong., 2d Sess.

> him and the Government he may bide his time and allow the Government of the United States to sue him in the proper tribunal; in which case, * * * he may be entitled to a trial by jury, and he may prefer his set-off." (58 Cong. Globe 1674.)

Observing that it was "as much the duty of the citizen to pay the Government as it is the duty of the Government to pay the citizen" (58 Cong. Globe 1674), the sponsors of the measure urged that, where an individual claimant was indebted to the Government, the Court of Claims should be able to "adjudicate the case fully, * * * ascertain and determine a set-off, and then, if the balance * * * be determined against the individual, * * * the Government may proceed to collect it" (58 Cong. Globe 1675). The legislative materials leave little doubt that the set-off and counterclaim provision was deemed an essential and important aspect of the "bill to facilitate the administration of justice between the Government of the United States and its citizens" (58 Cong. Globe 1674).

It is clear that petitioner's contention, if sustained, would thwart the avowed purposes of the Congress in enacting the counterclaim provision, (1) to avoid a multiplicity of suits, and (2) to facilitate justice *between* the United States and its citizens. These purposes, which are fully demonstrated by the history of the provision, were, we submit, properly given effect by the decision below.

The court below noted the practical futility, and the inequity, of the rule for which petitioner here contends, in the following words (R. 16):

> We think that the plaintiff should not, in these circumstances, have a judgment against the Government. The effect of the payment of such a judgment would be to cancel the credit which the R. F. C. has given the plaintiff upon its debt to it, and restore the plaintiff's debt to the R. F. C. to its former amount, $5,963.51. The plaintiff's net worth would be exactly the same as it is now, and, since its debt to the R. F. C. is long past due, it would be, as it has long since been, under a duty to pay the R. F. C. not only the $3,104.87 which it would recover from the Government, but enough more to discharge its debt in full to the R. F. C. If it did its duty in this regard, the $3,104.87 would then be, in effect, where it is now, i. e., among the assets of the United States. So our exercise of our functions would have been a sheer waste of the time and energy of ourselves and of those who have participated in this litigation on the part of the plaintiff and the Government. Only by assuming that the plaintiff will take the judgment money and will not pay its debt to the Government could we say that a judgment for the plaintiff had accomplished anything other than circumlocution, and, on this assumption, our accomplishment would seem to have been less than worthy of our effort.

The practical view taken by the court below in carrying out the Congressional intention is clearly

within the rationale of the statement of this Court in *Barry* v. *United States*, 229 U. S. 47, 53, that "It would be folly to require the Government to pay under the one contract what it must eventually recover for a breach of the other." Hence, the legislative purpose of avoiding a multiplicity of suits is met. But the issue here is deeper than the procedural question of one suit versus two suits. Thus, if the decision below were to be reversed, and a separate proceeding required, the Government would be subjected to the risk that the moneys collected from it by the debtor might be dissipated and the corporation's separate judgment rendered wholly uncollectible,[8] the ultimate loss falling upon the public treasury.[9] This would obstruct the intention of the Congress underlying the counterclaim statute, to facilitate justice between the Government and its citizens.

II

The Sue-and-Be-Sued Powers of the R. F. C. Do Not Render the Counterclaim Statute Inapplicable Here

Petitioner's contention that Section 145 (2) of the Judicial Code is not applicable here, is based

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[8] As noted by the lower court, this would be "* * * a subjection of the sovereign's finances to risks and inconveniences to which no private person is by law subjected" (R. 17).

[9] Note that debts are reported to the General Accounting Office by R. F. C. when found to be otherwise uncollectible. See Appendix B, *infra*, p. 50.

in part upon the fact that R. F. C. may "sue and be sued" in its own name. From this fact petitioner argues that the R. F. C. is a separate and distinct legal entity like any private corporation, and is not, therefore, a part of the Government of the United States (Pet. Br. 15–28). We submit that this attribute of the Government corporation does not make its claims any the less "demands * * * on the part of the Government of the United States," within the meaning of the counter-claim provision.

A. Congress has provided that the R. F. C. "shall have power * * * to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal." (R. F. C. Act, Sec. 4, 15 U. S. C. 604.) This constitutes a waiver by Congress of the Government's sovereign immunity, which it could have bestowed upon its corporate agencies. *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 389; cf. *Sloan Shipyards* v. *U. S. Fleet Corp.* (Nos. 308 and 376), 258 U. S. 549. The sue and be sued power also subjects the Government corporation to certain incidents of litigation such as liability for costs if its suit is unsuccessful (*R. F. C.* v. *Menihan Corp.*, 312 U. S. 81), and liability to garnishment proceedings (*Federal Housing Administration* v. *Burr*, 309 U. S. 242).

But neither the suability of the Government corporation nor its power to sue deprives that

entity of its status as an agency of the United States (*R. F. C.* v. *Menihan Corp.*, 312 U. S. 81, 83), or abridge, in any degree the substantial rights of the United States. Those rights are fully alive in respect of property and transactions of the corporation, such as immunity from State taxation (*Clallam County* v. *United States*, 263 U. S. 341; see R. F. C. Act, Sec. 10); the right to priority in insolvency proceedings (cf. *United States* v. *Emory*, 314 U. S. 423, 430); the privilege of receiving a pledge of assets from a national bank to secure deposits of the corporation's funds (*Inland Waterways Corp.* v. *Young*, 309 U. S. 517), and other incidents of sovereignty.[19] *Emergency Fleet Corp.* v. *Western Union*, 275 U. S. 415 (reduced rates); cf. *United States Grain Corp.* v. *Phillips*, 261 U. S. 106; *Defense Supplies Corp.* v. *United States Lines Co.*, 148 F. 2d 311 (C. C. A. 2) certiorari denied, October 8, 1945.

Because of the relationship between a Government-owned corporation and the United States, the courts have uniformly held that in addition

[19] In *Sloan Shipyards* v. *U. S. Fleet Corp.* (No. 526), 258 U. S. 549, the Fleet Corporation was denied a priority in bankruptcy which it had claimed "as an instrumentality of the Government of the United States" (258 U. S. at p. 570). The apparent significance of this portion of the *Sloan Shipyards* decision is removed by *Davis* v. *Pringle*, 268 U. S. 315, in which, under the same bankruptcy laws, in effect at the time of the *Sloan* decision, the United States itself was denied a priority other than as a taxing power. This very point was referred to in the separate opinion of Chief Justice Taft in the *Sloan Shipyards* case (at p. 574).

to such corporation's right to sue and be sued, the United States may sue in its own name, under Section 24 (1) of the Judicial Code (28 U. S. C. 41), upon claims arising out of transactions with such corporation. *Erickson* v. *United States,* 264 U. S. 246 (Spruce Corporation); *United States* v. *Skinner & Eddy Corp.,* 35 F. 2d 889, 892 (C. C. A. 9), certiorari denied, 281 U. S. 777 (Fleet Corporation); *Russell Wheel & Foundry Co.* v. *United States,* 31 F. 2d 826, 828 (C. C. A. 6) (same); *United States* v. *Czarnikow-Rionda Co.,* 40 F. 2d 214, 215–216 (C. C. A. 2) (same); *United States* v. *Arthur,* 23 F. Supp. 537 (S. D. N. Y.) (R. F. C.); *United States* v. *Freeman,* 21 F. Supp. 593 (D. Mass.) (R. F. C.); *R. F. C.* v. *Graydon,* 16 F. Supp. 765 (E. D. S. C.) (R. F. C.); *R. F. C.* v. *Krauss,* 12 F. Supp. 44 (D. N. J.) (R. F. C.); *United States* v. *Stein,* 48 F. 2d 626 (N. D. Ohio) (U. S. Housing Corporation). Such decisions are in accord with the long established principle that the United States may sue in its own name on obligations in which it is the real party in interest, without regard to the form of the transaction or the character of the agent through which the claim arose. *Dugan* v. *United States,* 3 Wheat. 172, 180; *United States* v. *Buford,* 3 Pet. 12, 29; cf. *Benton* v. *Woolsey,* 12 Pet. 27, 31. For like reasons, the Court of Claims has entertained suits *against* the United States upon claims arising from transactions with a Govern-

ment corporation. *John Morrell & Co.* v. *United States*, 89 C. Cls. 167 (Federal Surplus Commodities Corporation); *Crooks Terminal Warehouses, Inc.* v. *United States*, 92 C. Cls. 401 (same).

These cases find a strong basis in policy, at least as applied to the R. F. C., since the United States has assumed its ultimate liabilities (R. F. C. Act, Sec. 9). This, we submit, is proof that the power of the corporation to sue was not intended by the Congress to deprive the United States of its traditional right to protect its substantial interests by bringing suit in its own name.

Since a counterclaim is in effect a suit by the defendant against the plaintiff which may result, as it did here, in an affirmative judgment for the counterclaimant (cf. *Nassau Smelting Works* v. *United States*, 266 U. S. 101, 106; *Reeside* v. *Walker*, 11 How. 271), there is no basis in logic or in reason for denying to the United States the right to assert in a counterclaim a demand which it could assert in an independent suit. If one of the announced legislative purposes of Section 145 (2) is to be achieved—the elimination of multiplicity of actions—it is clear that the counterclaim jurisdiction created in the Court of Claims must be at least as broad as that vested in United States district courts over suits brought by the Government. Thus, the Court of Claims was correct in following its previous decisions holding that the

Government has the right to recover on counterclaims originating in the transactions of its corporate agencies. *Crane* v. *United States*, 73 C. Cls. 677, 684, 689, certiorari denied, 287 U. S. 601; *Ship Construction Company, Inc.* v. *United States*, 91 C. Cls. 419, 464, certiorari denied, 312 U. S. 699.

There is nothing in the organic legislation creating the R. F. C., or in the amendments thereto, to indicate that it is not as much a part of the "Government of the United States" as any regular department or noncorporate establishment. On the contrary, the corporation's administrative methods and the assumption by the United States of its ultimate liabilities are facts which plainly show its inherently governmental nature. In any event, we submit that here, as in an earlier case where the governmental character of the funds of a Government corporation was also relevant, the "motives which lead Government to clothe its activities in corporate form are entirely unrelated to the problem." Cf. *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 523. This is particularly true here inasmuch as the R. F. C. has in effect requested its principal, the United States, to assert by way of counterclaim the demand here in question. At the same time, the fiscal separateness of R. F. C. is fully preserved, since the check for the tax refund was paid to R. F. C. (R. 13–14) and the judgment rendered for the United States in this suit, if col-

lected, would likewise be paid to R. F. C. (Appendix B, *infra*, p. 49).

B. The following survey of the corporation's functions, powers, etc., shows the close relationship of the R. F. C. to the Government of the United States.

1. The management and direction of the R. F. C. are entrusted to a board of directors appointed, as are other officers of the United States, by the President by and with the advice and consent of the Senate.[11] Since 1939, the R. F. C. has functioned under the general supervision of a noncorporate government agency. Pursuant to the Reorganization Act of 1939,[12] R. F. C. was placed by the President under the Federal Loan Agency, which supervises the administration and is responsible for coordinating the functions and activities of the several Government lending agencies.[13] In February 1942, the President ordered all functions, powers, and duties of the Federal Loan Agency relating to R. F. C. to be

[11] Reconstruction Finance Corporation Act, as amended (47 Stat. 5; 15 U. S. C. § 601 *et seq.*), section 3. See also 75 Cong. Rec. 1916. The original board of R. F. C. consisted of the Secretary of the Treasury, the Governor of the Federal Reserve Board, the Farm Loan Commissioner, and four other directors. It now consists of five members, no more than three of whom may be members of the same political party and no more than one of whom may be appointed from any one Federal Reserve district.

[12] 53 Stat. 561.

[13] President's Reorganization Plan No. I of April 25, 1939, 53 Stat. 1423.

transferred to the Department of Commerce and to be administered under the direction and supervision of the Secretary of Commerce.[14] By the Act of February 24, 1945, Pub. Law No. 4, 79th Cong., 1st Sess., the Federal Loan Agency was made an independent establishment and all powers of the Department of Commerce relating to the R. F. C. were transferred to the Federal Loan Agency. The officers and employees of R. F. C. are selected, employed and compensated in the manner applied by Congress to the employment and compensation of officers and employees of many noncorporate agencies of the Government.[15]

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[14] Executive Order No. 9071 of February 24, 1942.

[15] Legislative Appropriation Act, fiscal year 1933, section 107 (a) (4) (47 Stat. 402); Act of January 31, 1935, section 1 (49 Stat. 1); Independent Offices Appropriation Act, 1939, section 5 (52 Stat. 435); Independent Offices Appropriation Act, 1940, section 5 (53 Stat. 550); Independent Offices Appropriation Act, 1941, section 4 (54 Stat. 141); Independent Offices Appropriation Act, 1942, section 4 (55 Stat. 123); Fifth Supplemental National Defense Appropriation Act, 1942, section 403 (56 Stat. 132); Independent Offices Appropriation Act, 1943, section 3 (56 Stat. 422); and Independent Offices Appropriation Act, 1944, section 205 (57 Staf. 196), relate to the compensation and the citizenship of R. F. C. officers and employees. The Act of August 2, 1939, section 9A (1) (53 Stat. 1148); First Deficiency Appropriation Act, 1941 (55 Stat. 74–75); Independent Offices Appropriation Act, 1943, section 4 (56 Stat. 422); and Departments of State, Justice and Commerce Appropriation Act, 1944, section 403 (57 Stat. 301), prohibit the payment of salary or wages by R. F. C. to any person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force of violence. R. F. C.

2. The funds of the R. F. C. come from the Treasury of the United States and are destined to return thereto. R. F. C.'s capital stock of $500,000,000 was subscribed exclusively by the United States, its sole stockholder.[16] The obligations of R. F. C., which are fully and unconditionally guaranteed by the United States, are issued and marketed through the Secretary of the Treasury and are treated as public debt transactions.[17] R. F. C. is authorized to act as a depositary of public moneys and as financial agent of the United States and, in turn, is authorized to deposit its moneys with the Treasurer of the United States.[18] Upon its liquidation, either by itself during the first 15 years, or thereafter by the Secretary of the Treasury, any surplus of R. F. C. is to be carried into the miscellaneous receipts of the Treasury of the United States.[19]

employees have received overtime compensation pursuant to the Joint Resolution of December 22, 1942 (56 Stat. 1608) and now receive overtime compensation under the Act of May 7, 1943 (57 Stat. 75). The Act of November 26, 1940 (54 Stat. 1211) and the Executive Order No. 8743 of April 23, 1941, relating to extension of the classified executive Civil Service of the United States, are applicable to R. F. C. employees and the Civil Service Retirement Act, as amended (46 Stat. 468) is extended to such employees under the Act of January 24, 1942 (56 Stat. 13).

[16] R. F. C. Act, as amended, *supra*, section 2.

[17] *Id.*, section 9.

[18] *Id.*, sections 7, 12.

[19] *Id.*, section 4, 13.

Moreover, administrative expenses of R. F. C. are paid from annual appropriations made by Congress.[20] The franking privilege has been granted to R. F. C. and it is authorized to avail itself of the use of information, services, facilities, offices, and employees of any board, commission, independent establishment, or executive department of the Government, with the latter's consent.[21]

3. R. F. C. was formed to carry out the fiscal powers of the United States. Congress has authorized the corporation to make loans and other-

[20] First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1647–1648); Independent Offices Appropriation Act, 1938 (50 Stat. 350); Independent Offices Appropriation Act, 1939 (52 Stat. 434); Independent Offices Appropriation Act, 1940 (53 Stat. 549); Urgent Deficiency and Supplemental Appropriation Act, fiscal years 1939 and 1940 (53 Stat. 984); Independent Offices Appropriation Act, 1941 (54 Stat. 123); First Deficiency Appropriation Act, 1941 (55 Stat. 63); Independent Offices Appropriation Act, 1942 (55 Stat. 102–103); Independent Offices Appropriation Act, 1943 (56 Stat. 403); and Departments of State, Justice, and Commerce Appropriation Act, 1944 (57 Stat. 292).

Section 7 of the First Deficiency Appropriation Act, fiscal year 1936, *supra*, prohibited R. F. C. from incurring, after June 30, 1937, any obligations for administrative expenses, except pursuant to an annual appropriation specifically therefor. But even prior to this Act, R. F. C. was required, in conformance with the President's policy expressed in Executive Orders Nos. 7126 of August 5, 1935, and 7150 of August 19, 1935, to submit fiscal year estimates of administrative expenses to the Bureau of the Budget in advance of incurring obligations therefor.

[21] R. F. C. Act, as amended, *supra*, section 4.

wise give financial aid in a wide variety of situations, "to aid in financing agriculture, commerce, and industry, including facilitating the exportation of agricultural and other products".[22] R. F. C. may make loans to railroads;[23] to "any business enterprise when capital or credit, at prevailing rates for the character of loan applied for, is not otherwise available", "for the purpose of maintaining and promoting the economic stability of the country or encouraging the employment of labor";[24] to States for the relief of destitution[25] or to aid in financing self-liquidating projects;[26] to aid in the relief of disasters;[27] "to finance sales of agricultural surpluses in foreign countries";[28] and "to finance the carrying and orderly marketing of agricultural commodities and livestock produced in the United States."[29]

In addition to its loan-making powers, which the President may suspend from time to time,[30]

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[22] R. F. C. Act, as amended, *supra*, section 5.

[23] *Id.*, section 5.

[24] *Id.*, section 5d.

[25] Emergency Relief and Construction Act of 1932, section 1 (47 Stat. 709).

[26] *Id.*, section 201 (a); see also R. F. C. Act, as amended, *supra*, section 5d.

[27] *Id.*, section 201 (a) (6), as amended by 48 Stat. 20.

[28] *Id.*, section 201 (c).

[29] *Id.*, section 201 (d).

[30] Under the Act of January 26, 1937, as amended, if "the President finds * * * that credit for any class of borrowers to which the Corporation is authorized to lend is sufficiently available from private sources to meet legitimate

R. F. C. has been directed by Congress to allocate and transfer various amounts to other branches of the Government, and in this respect, acts in a capacity similar to that of the Treasury of the United States.[31] R. F. C. is required to make reports of its operations to Congress and the President.[32]

The above analysis leaves no doubt that the R. F. C. is as fully a part of "the Government of the United States" as any of the regular departments.

III

The Government's Accounting Procedures Do Not Limit the Scope of the Counterclaim Provision

Petitioner argues that only those "demands" may be made the subject of a counterclaim under Section 145 (1) of the Judicial Code which are settled and adjusted in the General Accounting Office under the Budget and Accounting Act of 1921; that the powers of that Office do not extend to claims arising out of R. F. C. functions; and therefore that such claims may not be asserted

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demands upon fair terms and rates," he "may authorize the directors to suspend the exercise by the Corporation of any such lending authority from such time or times as he may deem advisable."

[31] R. F. C. Act, as amended, *supra*, sec. 2, and Act of February 4, 1933 (47 Stat. 795).

[32] R. F. C. Act, as amended, *supra*, sec. 15; Emergency Relief and Construction Act of 1932, sec. 201 (b).

as a counterclaim or set-off under Section 145 (1) (Pet. Br. 9–15). This argument does not bear analysis, and, in any event, does not support the conclusion.

A. The Budget and Accounting Act of 1921 (c. 18, 42 Stat. 20, 31 U. S. C. 1 *et seq.*) created "an establishment of the Government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States." It abolished the offices of Comptroller of the Treasury and Assistant Comptroller of the Treasury and transferred their functions, employees and facilities to the General Accounting Office (*Id.* secs. 301, 304; 31 U. S. C. 41, 44).

It also vested in that Office a number of functions over the accounts of "the departments and establishments." For example, the Comptroller General is authorized to prescribe "the forms, systems, and procedure for administrative appropriation and fund accounting in the several departments and establishments" (*Id.* sec. 309; 31 U. S. C. 49); "All departments and establishments" must furnish to the Comptroller General such information as he may require regarding their "financial transactions", and he may examine their books and records (*Id.* sec. 313; 31 U. S. C. 54); the General Accounting Office is authorized to "receive and examine all accounts"

of salaries and expenses of enumerated departments, bureaus and establishments of the Government (*Id.* sec. 304; 31 U. S. C. 74); and the head of any executive department or other establishment may apply to the General Accounting Office for a decision upon any question involving a payment to be made, and such decision shall govern the agency in passing upon the account containing the disbursement (*Id.* sec. 304; 31 U. S. C. 74). Other provisions of the 1921 Act prescribe functions relating to specified departments, agencies or bureaus.

In support of its contention, petitioner cites Section 2 of the 1921 Act (42 Stat. 20), which provides:

> When used in this Act—The terms "department and establishment" and "department or establishment" mean any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including the municipal government of the District of Columbia, but do not include the Legislative Branch of the Government or the Supreme Court of the United States; * * *.[33]

This provision contains no mention of Government corporations, and petitioner contends that R. F. C. is therefore excluded from all the func-

[33] Petitioner erroneously states in its brief (p. 13) that this definition defines "the Government of the United States" as well as the departments and establishments.

tions and powers of the General Accounting Office. The contention contains several fallacies:

1. The provision in the 1921 Act pertinent here does not refer to the "departments and establishments" but uses much broader language. Section 305 of the 1921 Act amended Section 236 of the Revised Statutes to read as follows:

> All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.[34]

This section, it will be observed, makes no mention whatever of "departments or establishments", but applies generally to demands of "the Government of the United States." Consequently, there is nothing to prevent the application of this provision to the finally audited claims of a Government corporation such as R. F. C.

2. The accounts of R. F. C. are audited, adjusted and settled by its own officers and agents.[35]

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[34] Rev. Stat. § 236 was in turn derived from Section 2 of the Act of March 3, 1817, (c. 45, 3 Stat. 366), which was identical with the 1921 version except that the power of settlement and adjustment was vested in the Treasury Department.

[35] This is a result of the powers granted to the board of directors "to determine and prescribe the manner in which its obligation shall be incurred and its expenses allowed and paid", and to prescribe "regulations governing the manner in which its general business may be conducted and the

But the R. F. C., in carrying out its functions, is specifically authorized to "avail itself of the use of information, services, facilities, officers, and employees" of any "independent establishment * * * of the Government" with the latter's consent (R. F. C. Act, sec. 4), and the Budget and Accounting Act of 1921, *supra*, (sec. 301), has expressly characterized the General Accounting Office as an "establishment of the Government."

Hence, under the very terms of these statutes, R. F. C. is authorized to invoke the facilities of the General Accounting Office as a means of collecting its demands. Since the General Accounting Office is the gateway through which the great body of claims against the Government must pass before payment is made, principles of sound administration justify, if they do not require, all branches of the Government to utilize the facilities of that Office in arresting public funds about to be paid to a debtor of any Government agency, in order that the financial interests of the United States may be adequately protected. The broad powers of the G. A. O. to settle and adjust "all claims and demands whatever by the Government of the United States, or against it, and all accounts whatever in which the Government of

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powers granted to it by law may be exercised and enjoyed" (Sec. 4, 15 U. S. C. 604). However, since the Act of February 24, 1945 (Pub. Law No. 4, 79th Cong., 1st sess.), the Comptroller General is authorized to make an annual audit of "the financial transactions of all Government corporations."

the United States is concerned", are clearly adequate to include the steps taken by the Comptroller General and the R. F. C. in the instant case.

3. The uniform practice in the General Accounting Office has been in accord with this construction of its powers under the Budget and Accounting Act of 1921. As is shown by a letter from the Acting Comptroller General (Appendix, *infra*, pp. 47–50), the General Accounting Office has had a system for over 20 years whereby it records debts due to any branch of the Government, and asserts them by way of set-off against any debtor who has an allowable claim against the Government. At the request of the General Accounting Office, embodied in a General Order issued April 4, 1934 (13 Comp. Gen. 491), the R. F. C. and several other Government corporations have from time to time voluntarily reported to the General Accounting Office certain of their otherwise uncollectible debts, in order to have the General Accounting Office apply thereto public funds that would otherwise be paid to the debtor on other claims (see Appendix, *infra*, p. 49).

The demand here involved falls within the latter category and was reported by R. F. C. to the Comptroller General. Hence, when petitioner presented its tax refund claim to the Comptroller General for allowance, the latter was confronted with a record—furnished by the R. F. C. precisely to meet that

contingency—that a greater sum was due from petitioner to another arm of the Government. In those circumstances, the Comptroller General would have been remiss in his duties had he permitted the payment to petitioner of $3,000 from the public treasury, forcing R. F. C. to find other means of collecting its claim for $7,000—the loss of which would fall upon the public treasury. At the same time the fiscal separateness of R. F. C. was preserved, since the check for the tax refund was issued to R. F. C.

The situation here is clearly distinguishable from that presented in *Skinner & Eddy Corp.* v. *McCarl*, 275 U. S. 1, strongly relied upon by petitioner. That case did not involve the counterclaim provision, but rather Rev. Stat. § 951 (28 U. S. C. 774), pursuant to which a defendant in a suit brought by the United States is permitted to claim a credit if his claim has been presented to and disallowed by the Treasury Department (after 1921, the General Accounting Office). In that case this Court held that a contractor with the U. S. Shipping Board Emergency Fleet Corporation was not entitled to a writ of mandamus to compel the Comptroller General to consider and disallow alleged claims by the contractor against the Corporation, for use as credits in threatened suits by the United States on Fleet Corporation's contracts. Mr. Justice Brandeis, speaking for this Court, pointed out that the financial transactions of the Corporation "at no

time * * * passed through the hands of the general accounting officers of the Government", and held that substantial compliance with the provisions of Rev. Stat. § 951 would be had if the claims were presented to and disallowed by the accounting officers of either the Shipping Board or the Corporation (275 U. S. at 7, 12).

Here the Government corporation's claim against petitioner was fully audited and adjusted by the R. F. C., and the General Accounting Office was not requested to pass upon the merits of the claim. The latter agency was merely advised that the R. F. C. had an uncontroverted, liquidated claim against the petitioner, and was requested to apply that claim against any credits standing in petitioner's favor. It so happened that the petitioner had an allowed tax refund of about $3,000 standing to its credit on the books of the General Accounting Office, and that Office applied it to the R. F. C. claim. Thus, the Comptroller General was not called upon to exercise his discretion in the matter of passing on the merits of the R. F. C. claim as he was in connection with the corporate agency claim involved in the case of *Skinner & Eddy Corp.* v. *McCarl, supra.* Moreover, in the latter case, this Court stressed and relied upon the consistent administrative practice of the General Accounting Office and the Government corporation, under which the latter's claims were audited and settled by its own accountants, and not by the General Accounting

Office. Here, the consistent administrative practice has been for the General Accounting Office to *collect* by set-off the claims of Government corporations reported to it for that purpose. The decision in that case does not, therefore, control the case at bar.

Indeed, wholly apart from the counterclaim statute, the Comptroller General would have acted properly in refusing to pay petitioner its claim so long as it remained indebted to a federal agency. Without statute, the United States has the power and right to effect accounting set-offs and adjustments in connection with claims presented to it for payment, "the exercise of the common right, which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him." *Gratiot v. United States*, 15 Pet. 336, 370; *McKnight v. United States*, 98 U. S. 179, 186. It is the plain duty, therefore, of all Government officers to do the same in order to protect the interests of the United States. To hold that any Government officer charged with the responsibility of certifying claims for payment, must certify for payment a claim against the United States when he has actual knowledge that the claimant owes the Government on some other transaction, would preclude Government officers from exercising that degree of prudence expected and demanded of persons engaged in private business. The court be-

low was clearly correct, therefore, in stating that it was the duty of someone, on behalf of the Government, to see that this set-off was made.

B. But it is in fact immaterial whether or not the General Accounting Office had power to receive from the R. F. C. notification of its demand against petitioner and to assert it by way of set-off against petitioner's claim against the United States. The provisions of Section 145 (2) of the Judicial Code impose a duty upon the Court of Claims to recognize and enforce a counter-demand of the United States whenever the evidence before that court shows such a demand to exist; and it is immaterial whether or not the attorneys for the United States file a formal plea of set-off or counterclaim. *United States* v. *Burns*, 12 Wall. 246, 254; *Clark* v. *United States*, 95 U. S. 539, 543; *United States* v. *Carr*, 132 U. S. 644, 650; *Wisconsin Central R. R. Co.* v. *United States*, 164 U. S. 190, 212.

Viewed in another aspect, the counterclaim provision constitutes a condition to the privilege of bringing suit against the sovereign (*McElrath* v. *United States*, 102 U. S. 426, 440), and it would have been the duty of the Court of Claims to enforce the condition merely upon the allegations of petitioner's own complaint, which themselves disclosed petitioner's indebtedness to the R. F. C. (R. 1–3). The channel by which the information

concerning the counter-demand was brought to the attention of the Court of Claims is wholly immaterial. Accounting statutes, which allocate duties and responsibilities of safeguarding against improper expenditure of public moneys, belong "to an entirely different class" from those relating to the defense of suits against the Government in the Court of Claims. Cf. *United States* v. *Jones*, 119 U. S. 477. Such statutes are clearly not *in pari materia* with Section 145 (2). *Taggart* v. *United States*, 17 C. Cls. 322. The very purpose of resort to the courts in a situation like that at bar is to go behind accounting action unfavorable to the plaintiff, and to obtain a judicial ascertainment of the rights of the parties. *United States* v. *Burchard*, 125 U. S. 176; *Steele* v. *United States*, 113 U. S. 128; *Cosgrove* v. *United States*, 31 C. Cls. 332. Such judicial determination is the only final adjudication of the contest. *Richmond F. & P. Ry. Co.* v. *McCarl*, 62 F. 2d 203 (App. D. C.), certiorari denied, 288 U. S. 615; *Skinner & Eddy Corporation* v. *McCarl*, 275 U. S. 1, 5, fn. 2.

It is clear that the General Accounting Office did not exceed its authority in setting off the R. F. C. claim, and that the Court of Claims acted within its jurisdiction in adjudicating the counterclaim.

CONCLUSION

We submit that the judgment should be affirmed.

J. HOWARD MCGRATH,
Solicitor General,
JOHN F. SONNETT,
Assistant Attorney General,
DAVID L. KREEGER,
Special Assistant to the Attorney General.
JOHN R. BENNEY,
SAMUEL D. SLADE,
Attorneys.

DECEMBER 1945.

APPENDIX A

The following are the texts of statutes referred to in the Government's brief.

Section 145 of the Judicial Code, 28 U. S. C. § 250, provides:

> The Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> (1) *Claims against United States.*
>
> First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to the said court jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims", or to hear and determine other claims which, prior to March 3, 1887, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.
>
> (2) *Set-offs.*
>
> Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever

on the part of the Government of the United States against any claimant against the Government in said court: *Provided*, That no suit against the Government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States, shall be allowed under this chapter until an account for said fees shall have been rendered and finally acted upon as required by law, unless the General Accounting Office fails to act finally thereon within six months after the account is received in said office.

Section 146 of the Judicial Code, 28 U. S. C. § 252 provides:

Judgments for set-off or counterclaims.—Upon the trial of any cause in which any set-off, counterclaim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such court are enforced.

R. S. 951, as amended, 28 U. S. C. 774, provides:

Suits by United States against individuals; credits.—In suits brought by the

United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the General Accounting Office for its examination, and to have been by it disallowed, in whole or in part, unless it is proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the General Accounting Office by absence from the United States or by some unavoidable accident.

The Act of March 3, 1875, c. 149, 18 Stat. 481, as amended, 31 U. S. C. 227, provides:

Offsets against judgments against United States.—When any final judgment recovered against the United States duly allowed by legal authority shall be presented to the Comptroller General of the United States for payment, and the plaintiff therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Comptroller General of the United States to withhold payment of an amount of such judgment, equal to the debt thus due to the United States; and if such plaintiff assents to such set-off, and discharges his judgment or an amount thereof equal to said debt, the Comptroller General of the United States shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff denies his indebtedness to the United States, or refuses to consent to the set-off, then the Comptroller General of the United States shall withhold payment of such further amount of such judgment, as in his opinion will be sufficient to cover all legal charges and costs in prose-

cuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Comptroller General of the United States to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Comptroller General of the United States with 6 per centum interest thereon for the time it has been withheld from the plaintiff.

The following provisions of the Budget and Accounting Act of 1921 (Act of June 10, 1921, c. 18, § 2, 42 Stat. 20):

SEC. 2. When used in this Act—

The terms "department and establishment" and "department or establishment" mean any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including the municipal government of the District of Columbia, but do not include the Legislative Branch of the Government or the Supreme Court of the United States;

The term "the Budget" means the Budget required by section 201 to be transmitted to Congress;

The term "Bureau" means the Bureau of the Budget;

The term "Director" means the Director of the Bureau of the Budget; and

The term "Assistant Director" means

the Assistant Director of the Bureau of the Budget.

* * * * *

SEC. 301. There is created an establishment of the Government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States. The offices of Comptroller of the Treasury and Assistant Comptroller of the Treasury are abolished, to take effect July 1, 1921. All other officers and employees of the office of the Comptroller of the Treasury shall become officers and employees in the General Accounting Office at their grades and salaries on July 1, 1921, and all books, records, documents, papers, furniture, office equipment and other property of the office of the Comptroller of the Treasury shall become the property of the General Accounting Office. The Comptroller General is authorized to adopt a seal for the General Accounting Office.

* * * * *

SEC. 304. All powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with this Act, be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. The balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the

Government. The revision by the Comptroller General of settlements made by the six auditors shall be discontinued, except as to settlements made before July 1, 1921. * * *

States.

* * * * *

SEC. 313. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 291 of the Revised Statutes.

Section 4 of the Reconstruction Finance Corporation Act, Act of January 22, 1932, c. 8, § 4, 47 Stat. 6, as amended, 15 U. S. C. 604, provides in pertinent part:

Period of succession; powers; use of mails and other facilities of Government.—The corporation shall have succession for a period of fifteen years from the date of the enactment hereof, unless it is sooner dissolved by an Act of Congress. It [the R. F. C.] shall have power to * * * sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; * * * to prescribe, amend, and repeal, by its board of directors, bylaws, rules, and regulations governing the manner in which its general business may be conducted and the powers granted to it by law may be exercised and enjoyed * * * The board of directors of the corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid. * * * The corporation, with the consent of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of the sections hereinbefore enumerated.

APPENDIX B

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, November 30, 1945.

B–35182

The Honorable The ATTORNEY GENERAL.

MY DEAR MR. CLARK: This is in response to the informal inquiry of November 27, 1945, by your Department with regard to the practice and procedure of the General Accounting Office in examining claims against the United States, where a cross-claim is found to be involved.

In furtherance of the duties imposed upon the General Accounting Office by 31 U. S. C. 71, 72, and 93 and in view of the enactment of relief legislation relating to accountable officers or the inadequacy of their surety bonds to insure recovery, in proceedings under 31 U. S. C. 505, of large overpayments incident to Government transactions during the First World War for which credit had been disallowed or suspended in the official accounts of accountable officers, the Department of Justice (file 208677) suggested to the Comptroller General that "recoveries very greatly in excess of the cost might be realized by creating a small additional force" in the General Accounting Office "charged with the duty of collecting, as far as possible, all such suspended or disallowed items from the ultimate beneficiaries." In letter of October 19, 1921, the Attorney General explained that the suggestion made "was intended to cover

only the accounts of disbursing officers of the Army during the World War, proposing, * * * 'an activity separate from that of ordinary accounting procedure.'"

For purposes of convenience and practicability the special procedure thus suggested by the Attorney General was consolidated with the ordinary accounting procedure for collection of debts certified due by the General Accounting Office as outlined in the Annual Report of the General Accounting Office, 1923, House Document No. 101, 68th Congress, 1st Session, page 6; and, by Circular No. 10 of February 7, 1923, the Comptroller General established a collection unit whose functions included the keeping of a record of all debts owed to the United States incident to any transaction of any of its agents or agencies. By General Regulation No. 37 of July 7, 1924, 4 Comp. Gen. 1083, the collection unit was transferred to the Claims Division of the General Accounting Office so that its work was coordinated with the settlement and adjustment of claims by or against the United States or in which the Government is concerned either as debtor or creditor. Since this system was set up, whenever any claim is presented to the General Accounting Office and allowed, and it is found that the claimant is indebted to the United States in any amount, the certificate of settlement of the General Accounting Office directs that the amount due and allowed to the claimant be applied, to the extent required, to the payment of the debt due to the United States or any of its agencies, as shown by the debt records. If the amount due to the United States or its agencies is less than the amount due to the claimant, the

certificate of settlement directs the issuance of two checks, one to the agency or official having custody or jurisdiction over the account to be credited with the amount of the debt, and the balance to the claimant. Such directions are uniformly observed by the Treasurer of the United States. This procedure was followed as to the claims involved in *Cherry Cotton Mills, Inc.* v. *The United States*, C. Cls. No. 45885, decided by the Court of Claims March 5, 1945, judgment entered April 2, 1945.

By General Order 50, Supplement 1, issued by the General Accounting Office on August 4, 1934, 13 Comp. Gen. 491, all Government departments and agencies are requested and authorized to transmit to the General Accounting Office reports of any debts due to them or to the United States. While this includes only those Government corporations organized after 1933, Government corporations organized before that date, such as the Reconstruction Finance Corporation, from time to time report debts due to them. Such debts are treated by the General Accounting Office, for purposes of applying amounts due to claimants, in the same way as debts arising from transactions with any of the departments or other agencies of the Government.

If a judgment is recovered by the United States on a claim of a Government corporation having custody and control of its accounts, as is true in the *Cherry Cotton Mills* case, this office would take the position that the payment of that judgment should properly be made to the Government corporation involved, here the Reconstruction Finance Corporation. In such cases, this office would direct that the check in payment of the judgment be issued to

the Government corporation for deposit to its account.

Respectfully,

(Signed) FRANK L. YATES,
Acting Comptroller General
of the United States.

RECONSTRUCTION FINANCE CORPORATION,
Washington, November 30, 1945.

MR. JOHN F. SONNETT,
Assistant Attorney General,
Room 3141, Department of Justice,
Washington, D. C.

DEAR MR. SONNETT: You have asked that RFC advise you whether in the past it has requested other departments of the Government to withhold the payment of sums due certain creditors who were indebted to RFC in order that the set-off might be effected.

The procedure we have followed during the past several years has been substantially as follows: RFC has notified the department or agency of the Government which was indebted to the person, firm, or corporation indebted to RFC and has requested it to withhold payment to such person, firm, or corporation. At the same time RFC requests the General Accounting Office to withhold payment to the debtor on account of his debt to such department or agency of the Government, and instead to make direct settlement with the RFC. This action is taken most commonly in cases where the debt is considered otherwise uncollectible. This general practice is illustrated by the action taken

in connection with the claim of the RFC involved in *Cherry Cotton Mills, Inc.*, v. *United States*, 59 Fed. Supp. 122. Usually, whole or partial liquidation of the RFC's claim has been thus effected.

Similarly, other agencies from time to time have requested RFC to withhold sums due their debtors.

Very truly yours,

JOHN D. GOODLOE,
General Counsel.

U. S. GOVERNMENT PRINTING OFFICE: 1948

SUPREME COURT OF THE UNITED STATES.

No. 187.—October Term, 1945.

Cherry Cotton Mills, Inc., Petitioner, *vs.* The United States.	Petition for Writ of Certiorari to the Court of Claims.

[March 25, 1946.]

Mr. Justice Black delivered the opinion of the Court.

In 1942 the Government owed the petitioner a $3104.87 refund of processing and floor taxes paid by the petitioner under the Agricultural Adjustment Act. The petitioner owed the Reconstruction Finance Corporation $5963.51, balance on a note for borrowed money. The General Accounting Office directed the Treasury not to pay the tax refund to the petitioner, but to issue a check for the refund payable to the R. F. C. "to partially liquidate" petitioner's indebtedness to that governmental agency. As authorized by 28 U. S. C. 250(1), the petitioner then brought suit against the Government for the tax refund in the Court of Claims. The Government filed a counterclaim for the $5963.51, asserting the right to do so under 28 U. S. C. 250(2), which gives the Court of Claims jurisdiction to hear and determine "All set-offs, counterclaims, . . . or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said Court." The petitioner challenged the jurisdiction of the Court of Claims to hear and determine the counterclaim on these two grounds: (1) the Comptroller exceeded his authority in directing the Treasury to pay the tax refund to the R. F. C. instead of to the petitioner; (2) the R. F. C. should be treated in the same way as a privately owned corporation and when so treated the petitioner's admittedly valid indebtedness to R. F. C. is not a claim "on the part of the Government" entitling it to set up a counterclaim under 28 U. S. C. 250(2). The Court of Claims rejecting both these contentions, rendered judgment for the United States and against the petitioner for the amount it owed the R. F. C. less the amount of the tax refund. We granted certiorari.

Little need be said as to the contention concerning the alleged lack of authority of the General Accounting Office to direct the Treasury not to pay the petitioner, since we agree with the Court of Claims that its jurisdiction to hear and determine counterclaims is in no way dependent upon the preliminary intergovernmental steps which precede court action. For this reason the petitioner's argument based on our decision in *Skinner & Eddy Corporation v. McCarl*, 275 U. S. 1, where we considered the power of the Comptroller General in relation to wholly different legislation, has no bearing on the power of the Court of Claims under 28 U. S. C. 250(2).

Nor do we find any justification for giving to 250(2) the narrow interpretation urged. Its purpose was to permit the government, when sued in the Court of Claims, to have determined in a single suit all questions which involved mutual obligations between the government and a claimant against it. Legislation of this kind has long been favored and encouraged because of a belief that it accomplishes among other things such useful purposes as avoidance of "circuity of action, inconvenience, expense, consumption of the courts' time, and injustice." *Chicago & N. W. Railway v. Lindell*, 281 U. S. 14, 17 and cases cited.

We have no doubt but that the set-off and counterclaim jurisdiction of the Court of Claims was intended to permit the Government to have adjudicated in one suit all controversies between it and those granted permission to sue it, whether the Government's interest had been entrusted to its agencies of one kind or another. Every reason that could have prompted Congress to authorize the Government to plead counterclaims for debts owed to any of its other agencies applies with equal force to debts owed to the R. F. C. Its Directors are appointed by the President and affirmed by the Senate; its activities are all aimed at accomplishing a public purpose; all of its money comes from the Government; its profits if any go to the Government; its losses the Government must bear. That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by Government to accomplish purely Governmental purposes. *Inland Waterways Corporation v. Young*, 309 U. S. 517, 524. Nor is this Congressionally granted power to plead a counterclaim to be reduced because in other situations and with relation to other statutes, we have applied the doctrine of Governmental immunity or priority rather

rectly.[1] The Government here sought neither immunity nor privilege. Its right to counterclaim rests on different principles, one of which was graphically expressed by the sponsors of the Act of which Section 2(a) 2 is a part: It "is as much the duty of the citizen to pay the Government as it is the duty of the Government to pay the citizen." 50 Cong. Globe 1674, 37th Cong., 2d Sess.

Affirmed.

Mr. Justice Jackson took no part in the consideration or decision of this case.

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[1] Sloan Shipyards et al. v. U. S. Fleet Corporation, 258 U. S. 549; Keifer & Keifer v. Reconstruction Finance Corp., 306 U. S. 381; Reconstruction Finance Corporation v. J. G. Menihan Corp., 312 U. S. 81.